

2011 KENTUCKY GENERAL ASSEMBLY

**EFFECTIVE DATE OF NEW LEGISLATION IS
JUNE 8, 2011**

- unless noted as different in individual statute

**NOTE - SECTIONS OF CERTAIN BILLS ARE
EMERGENCY LEGISLATION OR HAVE NON-STANDARD
ENACTMENT DATES**

SENATE

SENATE BILL 26 IDENTIFICATION CARDS.

Section 1. KRS 186.531 is amended to read as follows:

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(f)1. The fee for an identification card shall be twelve dollars (\$12), four dollars (\$4) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and eight dollars (\$8) of which shall be forwarded to the road fund.

2. The fee for a duplicate identification card shall be twelve dollars (\$12), two dollars (\$2) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and ten dollars (\$10) of which shall be forwarded to the road fund.

3. a. The fee for an identification card for a person who does not have a fixed, permanent address shall be four dollars (\$4), two dollars (\$2) of which shall be used to cover the Transportation Cabinet's cost of equipment and supplies, and two dollars (\$2) of which shall be an administrative fee of the circuit clerk for issuing the card that shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustment to deputy clerks.

b. The fee for a second or subsequent duplicate identification card for a person who does not have a fixed, permanent address shall be as set forth in subparagraph 2. of this paragraph; and

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Section 2. KRS 186.412 is amended to read as follows:

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(7) (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who

resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.

(b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.

(c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

(d) A personal identification card shall be valid for a period of four (4) years from the date of issuance, **except that if the personal identification card is issued to a person who does not have a fixed, permanent address, then the personal identification card shall be valid for one (1) year from the date of issuance.** Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of Homeland Security, United States Bureau of Citizenship and Immigration Services is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.

(e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.

SENATE BILL 79 - OPERATION OF MOTOR VEHICLES.

EMERGENCY LEGISLATION

Section 1. KRS 186.050 is amended to read as follows:

* * * * *

(4) (a) **1.** Any farmer owning a truck having a gross weight of **twenty-six thousand (26,000)**~~thirty-eight thousand (38,000)~~ pounds or less may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight of **twenty-six thousand (26,000)**~~thirty-eight thousand (38,000)~~ pounds or less, and that during the

next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.

2. Any farmer owning a truck having a gross weight of twenty-six thousand one (26,001) pounds to thirty-eight thousand (38,000) pounds may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight between twenty-six thousand one (26,001) pounds and thirty-eight thousand (38,000) pounds, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.

* * * * *

Section 2 KRS 281.600 is amended to read as follows:

(1) The Department of Vehicle Regulation shall exercise all administrative functions of the state in relation to motor **carrier** transportation as defined in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of the Federal Motor Carrier Act. It shall have the right to regulate motor carriers as provided in this chapter and, to that end, may establish reasonable requirements with respect to continuous and adequate service of transportation, systems of accounts, records and reports, preservation of records, and safety of operation and equipment. It may issue subpoenas, subpoenas duces tecum and orders of personal attendance of witnesses, and production of pertinent records for any proceeding before it, and permit the taking of depositions, all in accord with the Rules of Civil Procedure, and it shall have the power to promulgate administrative regulations as it may deem necessary to carry out the provisions of this chapter. The department shall have the authority to promulgate regulations regarding safety requirements for motor vehicles and the method of operation, including the adoption of any of the federal motor carrier safety regulations and any motor vehicle operating contrary to safety regulations shall be in violation of this section.

(2) The provisions established by the Federal Highway Administration in Title 49, Part 393 of the United States Code of Federal Regulations shall not apply to:

(a) A motor vehicle or its towed unit having a fertilizer spreader attachment permanently mounted thereon, having a gross weight not to exceed thirty-six thousand (36,000) pounds, and used only for the transportation of bulk fertilizer; or

(b) A farm-wagon-type tank trailer of not more than two thousand (2,000) gallon capacity used during liquid fertilizer season as a field storage tank supplying fertilizer to a field applicator, and moved on a public highway for the purpose of bringing fertilizer from a local source of supply to a farm or field, or from one (1) farm or field to another, provided that the vehicle is being operated solely in intrastate transportation.

(3) The provisions established by the Federal Highway Administration in Title 49, Part 391, Part 393, and Part 396 of the United States Code of Federal Regulations shall not apply to a motor vehicle registered under subsection (4)(a)1. of Section 1 of this Act, or its towed unit, if:

(a) The vehicle is not engaged in interstate commerce;

(b) The vehicle is engaged in farming or agricultural related activities; and

(c) The gross vehicle weight rating of the vehicle or the gross vehicle combination weight rating of the vehicle and its towed unit is twenty-six thousand (26,000) pounds or less.

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Section 3. KRS 281.730 is amended to read as follows:

(4) The provisions of subsections (1) to (3) of this section pertaining to the maximum driving and on-duty time shall not apply to transporters of agricultural commodities or farm supplies for agricultural purposes if the transportation is limited to an area within a one hundred (100) air mile radius from the source of the commodities or distribution point for the farm supplies and is during Kentucky's planting and harvesting seasons. For the purposes of this subsection, Kentucky's ~~planting~~ ~~season shall mean March 1 to November 23 of each year,~~ and ~~Kentucky's~~ **harvesting** ~~seasons~~ ~~season~~ shall mean **January 1 to December 31** ~~June 1 to December 15~~ of each year.

Section 4. KRS 189.270 is amended to read as follows:

(4) An annual permit to transport farm equipment less than fourteen (14) feet in width shall cost eighty dollars (\$80). An annual permit to transport farm equipment that exceeds fourteen (14) feet in width from a dealership to a farm, ~~or~~ from a farm to a dealership, **or from a dealership to a dealership** shall cost one hundred fifty dollars (\$150).

Section 5. KRS 281.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

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(9) The term "interstate commerce" **shall have the same meaning as set out in the United States Code of Federal Regulations, 49 C.F.R. Part 390.5** ~~means commerce between any place in a state and any place in another state~~;

(10) The term "intrastate commerce" **shall have the same meaning as set out in the United States Code of Federal Regulations, 49 C.F.R. Part 390.5**~~[means commerce between any place in this state and any other place in this state];~~

Section 6. Whereas the registration date for farm vehicles will take place before the regular effective date for legislation from the 2011 Regular Session, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

SENATE BILL 103 TVA AND BREAKS INTERSTATE PARK PEACE OFFICERS.

Section 1. KRS 61.886 is amended to read as follows:

(1) **As used in KRS 61.886 to 61.892:**

(a) **"Commission" means the Breaks Interstate Park Commission created in KRS 148.220; and**

(b) **"TVA" means the Tennessee Valley Authority.**

(2) The Tennessee Valley Authority **or the Breaks Interstate Park Commission**~~], hereinafter called "TVA,"~~ may apply to the Governor for the appointment and commissioning of peace officers ~~and TVA policemen~~. Such persons shall be selected from a list submitted by TVA **or the commission** to the Governor. The Governor, upon such application being made and upon the payment to him **or her** of a one (1) time fee of five dollars (\$5) for each officer to be appointed, shall appoint, for annually renewable terms of one (1) year, such persons or as many thereof as he **or she** deems proper to be such peace officers ~~and policemen~~ and shall give commissions to those appointed. Appointments and annual renewals of appointments under this subsection shall be subject to approval by the sheriff of each county in which the peace officer will normally operate, not including counties into which he **or she** may pursue and arrest persons under KRS 61.887.

~~(3)~~~~(2)~~ Such commissions shall be recorded in the office of **Secretary of State**~~the county court clerk of the several counties in which such officer performs any duties as a TVA peace officer~~. No person shall be eligible for appointment and commission as a TVA **or commission** peace officer unless he **or she** has established to the satisfaction of the Governor that, except for county residency requirements, he **or she** possesses the qualifications prescribed for nonelective peace officers by KRS 61.300 and, in addition, that he **or she is**~~has been~~ a resident of Kentucky, or an adjoining state in which TVA **or the commission** operates, **and has been** for at least two (2) years at the time of his **or her** appointment.

Section 2. KRS 61.887 is amended to read as follows:

(1) Each TVA **or commission** officer appointed and commissioned pursuant to KRS 61.886 to 61.892 throughout every county in the Commonwealth in which TVA **or the commission** operates or owns or controls property, including leasehold interests~~;~~

(a) Shall have and exercise the powers of sheriffs ~~and constables~~ in making arrests for public offenses committed upon, about, or against such property or on public roads and the rights-of-way passing through or over such property;

(b) Shall have and exercise the powers of sheriffs in making arrests in any situation in which a person is placed in imminent danger of death or serious injury;

(c) Shall have authority to carry weapons for the reasonable purposes of his or her office and in performance of his or her assigned duties; ~~and~~

(d) While in pursuit of a person fleeing ~~from the property~~ after committing an act described in paragraph (a) or (b) of this subsection ~~of violence or destruction of the property~~, may pursue the person and make arrest anywhere in the Commonwealth; ~~may serve process in criminal and penal prosecutions for such offenses;~~ and

(e) Shall be subject to all the liabilities of sheriffs ~~or constables~~. Such power to arrest persons committing public offenses committed upon or about such property, roads, or rights-of-way shall exist whether such persons are found on or off such property, roads, or rights of way. Such TVA officers shall also have authority to carry weapons for the reasonable purposes of their offices and in performance of their assigned duties].

(2) TVA officers appointed and commissioned pursuant to KRS 61.886 to 61.892 may, throughout any county in the Commonwealth in which TVA operates or owns or controls property, including leasehold interests, have and exercise the powers of sheriff in that county if the sheriff of that county provides prior written authorization to the TVA defining the extent of supplemental authority being granted. Any supplemental authority granted pursuant to this subsection shall expire with the officer's commission granted under KRS 61.886 and may be renewed, as provided in this subsection, upon renewal of the commission authorized under KRS 61.886.

(3) When county-wide authority has not been granted under subsection (2) of this section, a sheriff of a county in which the TVA has property, the chief of police of a city within the county, or the commissioner of the Department of Kentucky State Police may extend peace officer authority within the city or county, as appropriate, during a disaster or other emergency.

Section 3. KRS 61.888 is amended to read as follows:

When TVA or the commission no longer needs the services of a person appointed and commissioned as a TVA or commission peace officer pursuant to this section, notice to that effect, signed by the general manager of TVA, the chairperson of the commission, or ~~by~~ the person having responsibility for general supervision of the work of such officer, shall ~~may~~ be filed in the office of the Secretary of State ~~several offices in which the commission of such officer is recorded~~. The Secretary of State ~~county clerk~~ shall note the fact upon the margin of the record ~~where the commission is recorded~~, and thereupon the power of the person to act as a TVA or commission peace officer shall cease ~~as to any particular county in which such notice is filed and recorded~~.

Section 4. KRS 61.889 is amended to read as follows:

Each TVA or commission peace officer appointed pursuant to KRS 61.886 to 61.892 shall, before he or she enters upon the discharge of the duties of his or her office, execute bond in the sum of fifty thousand dollars (\$50,000), with good security, conditioned upon the faithful performance of his or her duty as such officer, and take and subscribe an oath of office and the oath required by Section 228 of the Constitution of Kentucky. ~~The bond shall be executed before the county~~

~~judges/executive of the several counties in which he performs any duties as a TVA peace officer, and the bond shall be approved, and the oath administered, by the county judge/executive.] The bond and oath shall be entered of record by the Secretary of State~~[county clerks of the several counties in which executed]~~, and the execution of the bond and the taking of the oath shall be endorsed upon the commission of the person so qualifying. In lieu of such individual bonds, a duly executed bond covering all TVA or commission peace officers appointed and commissioned pursuant to this section, as principals, with TVA as surety, in the amount of fifty thousand dollars (\$50,000) for each such officer and conditioned for the faithful performance of his or her~~[their]~~ duties may be filed by TVA or the commission with the Secretary of State of the Commonwealth in which event individual bonds shall not be required.~~[Certified copies of such bonds shall be recorded with the county clerks of the several counties where such officers record their commissions and take their oaths.]~~~~

SENATE BILL 108 - COURTS

Section 1. KRS 24A.120 is amended to read as follows:

District Court shall have exclusive jurisdiction in:

- (1) Civil cases in which the amount in controversy does not exceed five ~~four~~ thousand dollars (\$5,000) ~~[\$4,000]~~, exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;
- (2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and
- (3) Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

Section 2. KRS 24A.230 is amended to read as follows:

- (1) The small claims division shall have jurisdiction, concurrent with that of the District Court, in all civil actions, other than libel, slander, alienation of affections, malicious prosecution and abuse of process actions, when the amount of money or damages or the value of the personal property claimed does not exceed two~~one~~ thousand five hundred dollars (\$2,500)~~[\$1,500]~~ exclusive of interest and costs.
- (2) The division may also be used in civil matters when the plaintiff seeks to disaffirm, avoid, or rescind a contract or agreement for the purchase of goods or services not in excess of two~~one~~ thousand five hundred dollars (\$2,500) ~~[\$1,500]~~ exclusive of interest and costs.

Section 3. KRS 24A.290 is amended to read as follows:

The defendant may file with the clerk a counterclaim against the plaintiff in an amount not in excess of two thousand five hundred dollars (\$2,500)~~fifteen hundred dollars (\$1,500)]~~ exclusive of interest and costs, if the counterclaim arose out of the same transaction or occurrence that is the subject matter of the plaintiff's claim, and if the counterclaim does not require for its adjudication the presence of third parties over whom the division cannot acquire jurisdiction. Any counterclaim shall be filed with the clerk, and a copy delivered to the plaintiff at least five (5) days prior to the

time of the hearing. If the defendant's counterclaim is in excess of the jurisdictional limits of the division, then the provisions of KRS 24A.310(1) shall apply.

Section 4. *Any case which has been filed in a Circuit Court or District Court prior to the effective date of this Act and the change in jurisdictional amounts shall remain in the court in which the case was originally filed, until the disposition of the case.*

SB 135 - ENFORCEMENT OF LOCAL GOVERNMENT ORDINANCES.

Section 1. KRS 65.8821 is amended to read as follows:

Each code enforcement board shall have the power to:

- (1) Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of KRS 65.8801 to 65.8839 and ordinances of the local government **or local governments creating the board.**
- (2) Conduct hearings, **or assign a hearing officer to conduct a hearing,** to determine whether there has been a violation of any local government ordinance that the board has jurisdiction to enforce. **Any member of the code enforcement board, including the chairman, may be assigned to conduct hearings on behalf of the board. All hearing officers, including members of a code enforcement board who serve as hearing officers, shall receive training related to the conduct of administrative hearings in accordance with procedures set out in KRS 13B.080.**
- (3) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the board may be served by any code enforcement officer.
- (4) Take testimony under oath. The chairman of the board, **or an assigned hearing officer,** shall have the authority to administer oaths to witnesses prior to their testimony before the board on any matter.
- (5) Make findings and issue orders that are necessary to remedy any violation of a local government ordinance that the board has jurisdiction to enforce.
- (6) Impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has jurisdiction to enforce.

Section 2. KRS 65.8825 is amended to read as follows:

- (1) Enforcement proceedings before a code enforcement board shall be initiated by the issuance of a citation by a code enforcement officer.
- (2) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of a local government ordinance, the officer is authorized to issue a citation **by:**
 - (a) Personal service to the alleged violator;**
 - (b) Leaving a copy of the citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or**
 - (c) Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular first-class mail of the United States Postal Service to the owner of record of the property if no one is on the premises at the time the citation is issued[to the offender].**

When authorized by ordinance, a code enforcement officer may, in lieu of immediately issuing a

citation, give notice that a violation shall be remedied within a specified period of time. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

(3) The citation issued by the code enforcement officer shall be in a form prescribed by the local government and shall contain, in addition to any other information required by ordinance or rule of the board:

- (a) The date and time of issuance;
- (b) The name and address of the person to whom the citation is issued;
- (c) The date and time the offense was committed;
- (d) The facts constituting the offense;
- (e) The section of the code or the number of the ordinance violated;
- (f) The name of the code enforcement officer;
- (g) The civil fine that will be imposed for the violation if the person does not contest the citation;
- (h) The maximum civil fine that may be imposed if the person elects to contest the citation;
- (i) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
- (j) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the code enforcement board to contest the citation and that the determination that a violation was committed shall be final.

(4) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to the administrative official designated by ordinance or by the board.

(5) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the code enforcement board to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

Section 3. KRS 65.8828 is amended to read as follows:

(1) When a hearing before the code enforcement board ~~is~~~~has been~~ requested, the code enforcement board, through its clerical and administrative staff, shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the code enforcement board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing ~~before the code enforcement board~~ who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

(2) Each case **that is the subject of a hearing**~~before a code enforcement board~~ may be presented by an attorney selected by the local government or by a member of the administrative staff of the local government. An attorney may either be counsel to the code enforcement board or

may represent the local government by presenting cases at the hearing~~[before the code enforcement board]~~, but in no case shall an attorney serve in both capacities.

(3) All testimony shall be under oath and shall be recorded. The code enforcement board, or assigned hearing officer shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(4) If a code enforcement board conducts the hearing, or upon the receipt of recommendations of a hearing officer pursuant to this subsection, then~~[At the hearing,]~~ the code enforcement board shall determine, based on the evidence presented, whether a violation was committed. If a hearing officer conducts the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the board. When the board determines that no violation was committed, an order dismissing the citation shall be entered. When the board determines that a violation has been committed, the board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.

(5) Every final order of a code enforcement board shall be reduced to writing, which shall include the findings and conclusions of the board, and the date the order was issued.~~[, and]~~ A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the board is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

Section 4. KRS 65.8815 is amended to read as follows:

(1) The board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the board shall select one (1) of their number to preside in place of the chair and exercise the powers of the chair.

(2) Meetings of the code enforcement board shall be held as specified in the ordinance creating the board.

(3) The presence of at least a majority of the board's entire membership shall constitute a quorum~~[two (2) or more members shall constitute a quorum on a three (3) member board, the presence of three (3) or more members shall constitute a quorum on a five (5) member board, and the presence of four (4) or more members shall constitute a quorum on a seven (7) member board]~~. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of a code enforcement board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for purposes of establishing a quorum.

(4) Minutes shall be kept for all proceedings of the code enforcement board and the vote of each member on any issue decided by the board shall be recorded in the minutes.

(5) All meetings and hearings of the code enforcement board shall be open to the public.

(6) The local government legislative body shall provide clerical and administrative personnel as reasonably required by its code enforcement board for the proper conduct of its duties.

Section 3. KRS 82.615 is amended to read as follows:

(1) Any person who receives notice of a parking violation shall respond to such notice as provided in this section within seven (7) days of the date of the notice, by either paying the fine set forth in the notice or requesting a hearing pursuant to KRS 82.620.

(2) If the owner of a vehicle cited for a parking violation has not responded to the notice within seven (7) days as provided in subsection (1) of this section, the local government shall send a second notice by regular first-class mail of the United States Postal Service~~[certified mail]~~ to the last known address of the registered owner of the vehicle as listed on the certificate of title. Such notice shall state that if the owner of the vehicle does not respond to the notice by either paying the fine or by requesting in writing a hearing pursuant to KRS 82.620, within seven (7) days of the receipt of the notice, the owner shall be deemed to have waived his right to a hearing and the determination that a violation was committed shall be considered final. Any person who fails to request a hearing or pay the fine within the seven (7) days shall be deemed to have refused to pay the fine levied by the citation.

(3) The registered owner of a vehicle at the time the violation occurred shall be liable for all fines, fees and penalties which he has refused to pay.

Section 6. KRS 82.700 is amended to read as follows:

As used in KRS 82.700 to 82.725:

(1) "Abatement costs" means a local government's costs for and associated with cleaning, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises to maintain and preserve public health, safety, and welfare in accordance with the portion of a local government's nuisance code pertaining to the condition of and maintenance of structures or premises, adopted pursuant to KRS 82.700 to 82.725 or KRS 381.770;

(2) "Local government" means a consolidated local government, county, urban-county government, charter county government, unified local government, or a city of any~~[the first, second, third, or fourth]~~ class;

(3)~~(2)~~ "Hearing board" means a body established by ordinance and empowered to conduct hearings pursuant to KRS 82.710 and composed of one (1) or more persons appointed by the mayor, county judge/executive, or chief executive officer of the local government. "Hearing board" also means any hearing officers appointed by the board. Any action of a hearing officer shall be deemed to be the action of the board;~~[and]~~

(4) "Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property;

(5)~~(3)~~ "Nuisance code" means an ordinance or ordinances enacted by a local government pursuant to KRS 82.705 or~~[and]~~ 381.770; and

(6) "Premises" means a lot, plot, or parcel of land, including any structures upon it.

Section 7. KRS 82.715 is amended to read as follows:

(1) Any person who violates the nuisance code shall be cited for the violation and shall receive notice of the violation. The form of the notice shall be designed by the local government in a manner reasonably calculated to inform the person of the nature of the violation, the penalties for violation, the procedure to be followed by him to respond to the notice, and that the determination shall be final unless contested pursuant to the hearing procedures provided under KRS 82.710.

(2) The notice of violation shall represent a determination that a violation has been committed,

and that determination shall be final unless contested.

(3) The owner of the property at the time the violation occurred shall be liable for all fines, fees, **abatement costs**, and penalties assessed for the violation.

(4) An appeal from the hearing board's determination may be made to the District Court of the county in which the city is located within **thirty (30)**~~seven (7)~~ days of the board's determination. The appeal shall be initiated by the filing of a complaint and a copy of the board's order in the same manner as any civil action under the Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the local government to establish that a violation occurred. If the court finds that a violation occurred, the owner shall be ordered to pay to the local government all fines, fees, and penalties occurring as of the date of the judgment. If the court finds a violation did not occur, the local government shall be ordered to dismiss the notice and the plaintiff shall be authorized to recover his costs.

(5) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.

Section 8. KRS 82.720 is amended to read as follows:

(1) The local government shall possess a lien on property for all fines, penalties, charges, **abatement costs**, and fees imposed pursuant to KRS 82.700 to 82.725. The lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes.

(2) Nothing in KRS 82.700 to 82.725 shall otherwise affect the rights or obligations between the owner of the property and those persons who claim a security interest in the property.

SECTION 9. A NEW SECTION OF KRS 82.700 TO 82.725 IS CREATED TO READ AS FOLLOWS:

KRS 82.722 KRS 82.700 to 82.725 not to be enforced upon agricultural land in unincorporated portion of county.

The provisions of KRS 82.700 to 82.725 shall not be enforced by a county government upon any property situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.

Section 10. KRS 381.770 is amended to read as follows:

(1) As used in this section:

(a) "Automobile collector" means a person who collects and restores motor vehicles; and

(b) "Ordinary public view" means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property;~~and~~

(c) "Parts car" means an automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of other automobiles; **and**

(d) "Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.

(2) Except as provided in subsection (3) of this section, it shall be unlawful for the owner, occupant or person having control or management of any land within a city, county, consolidated local government, urban-county, or unincorporated area to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:

(a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;

(b) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or nonoperative and which are not inhabited;

(c) Rubbish; or

(d) The excessive growth of weeds or grass.

(3) The provisions of paragraph (a) of subsection (2) of this section shall not apply to:

(a) Junked, wrecked, or nonoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);

(b) Junked, wrecked, or nonoperative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, or other means; and

(c) Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed, or leased by a motor carrier.

(4) It shall be unlawful in any city, county, consolidated local government, or urban-county for the owner of a property to permit any structure upon the property to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist in the structure which are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures, or other residents of the city, county, consolidated local government, or urban-county.

(5) Any city, county, consolidated local government, or urban-county may establish by ordinance reasonable standards and procedures for the enforcement of this section. The procedures shall comply with all applicable statutes, administrative regulations, or codes. Proper notice shall be given to property owners before any action is taken pursuant to this section; and, prior to the demolition of any unfit or unsafe structure, the right to a hearing shall be afforded the property owner.

(6) **Unless imminent danger exists on the subject property that necessitates immediate action, the city, county, consolidated local government, or urban-county government shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the property owner, a copy of the determination to any lien holder of record of the subject property by first-class mail with proof of mailing. The lien holder of record may, within forty-five (45) days from receipt of that notice, correct the violations cited or elect to pay all fines, penalty charges, and costs incurred in remedying the situation as permitted by subsection (7) of this section.**

(7) A city, county, consolidated local government, or urban-county shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this statute, and shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other~~[-subsequent]~~ liens, except state, county, school board, and city taxes, **except as provided in subsection (8) of this section. The lien**~~[-and]~~ may be enforced by judicial proceeding.

(8) **The lien provided in subsection (7) of this section shall not take precedence or priority over a previously recorded lien if:**

(a) **The city, county, consolidated local government, or urban-county government failed to provide the lien holder a copy of the determination in accordance with subsection (6) of this section; or**

(b) The lien holder received a copy of the determination as required by subsection (6) of this section, and the lien holder corrected the violations or paid the fines, penalty charges, and costs incurred in remedying the violation.

(9) In addition to the remedy prescribed in subsection (5) of this section or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city, county, or urban-county may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. The failure of a city, county, consolidated local government, or urban-county government to comply with subsection (6) of this section, and the failure of a lien to take precedence over previously filed liens as provided in subsection (8) of this section, shall not limit or restrict any remedies that the city, county, consolidated local government, or urban-county government has against the owner of the property.

(10) The provisions of subsections (5), (7), and (9) of this section shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area if the owner, occupant, or person is not the generator of the rubbish or is not dumping or knowingly allowing the dumping of the rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons onto the property.

HOUSE

Because House Bill 34 and House Bill 41 were enacted separately, the two bills have been merged as follows.

KRS 189.910 is amended to read as follows:

(1) As used in KRS 189.920 to 189.950, "emergency vehicle" means any vehicle used for emergency purposes by:

(a) The Department of Kentucky State Police;

(b) A public police department;

(c) The Department of Corrections;

(d) A sheriff's office;

(e) A rescue squad;

(f) An emergency management agency if it is a publicly owned vehicle;

(g) An ambulance service or medical first-response provider licensed by the Kentucky Board of Emergency Medical Services, for any vehicle used to respond to emergencies or to transport a patient with a critical medical condition;

(h) Any vehicle commandeered by a police officer;

(i) Any vehicle with the emergency lights required under KRS 189.920 used by a paid or volunteer fireman or paid or volunteer ambulance personnel, or a paid or local emergency management director while responding to an emergency or to a location where an emergency vehicle is on emergency call;

(j) An elected coroner granted permission to equip a publicly or privately owned motor vehicle with lights and siren pursuant to KRS 189.920 (10); or

(k) A deputy coroner granted permission to equip a publicly or privately owned motor vehicle with lights and siren pursuant to KRS 189.920 (10); ~~[- a fire department; any vehicle~~

~~used for emergency purposes by the State Police, a public police department, Department of Corrections, or sheriff's office; any vehicle used for emergency purposes by a rescue squad; any publicly owned vehicle used for emergency purposes by an emergency management agency; any vehicle used to respond to emergencies or to transport a patient with a critical medical condition if the vehicle is operated by a Cabinet for Health Services licensed ambulance provider or medical first response provider; any vehicle commandeered by a police officer; or any motor vehicle with the emergency lights required under KRS 189.920 used by a paid or volunteer fireman or paid or volunteer ambulance personnel or a paid or volunteer local emergency management director while responding to an emergency or to a location where an emergency vehicle is on emergency call].~~

(2) As used in KRS 189.920 to 189.950, "public safety vehicle" means public utility repair vehicle; wreckers; state, county, or municipal service vehicles and equipment; highway equipment which performs work that requires stopping and standing or moving at slow speeds within the traveled portions of highways; and vehicles which are escorting wide-load or slow-moving trailers or trucks.

KRS 189.920 is amended to read as follows:

* * * * *

(10) An elected coroner may equip a publicly or privately owned motor vehicle, or both with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section solely for the purpose of responding to a report of the death of a human being subject to the following terms and conditions:

(a) The coroner makes a written request to the legislative body of the county, urban-county, charter county, consolidated local government, or unified local government in which the coroner was elected to equip a publicly or privately owned motor vehicle, or both, with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section, and that request is approved by the legislative body by ordinance or by court order;

(b) The coroner may use the lights and siren only while responding to the scene of the report of a death of a human being and shall not, KRS 189.940 to the contrary notwithstanding, exceed the posted speed limit; and

(c) The permission granted pursuant to this section shall expire upon the coroner leaving office or the legislative body revoking the authorization.

(11) A deputy coroner certified pursuant to KRS Chapter 72 may equip a publicly owned or privately owned motor vehicle, or both, with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section solely for the purpose of responding to a report of the death of a human being, subject to the following terms and conditions:

(a) The deputy coroner has made a written request to the coroner to equip a publicly owned or privately owned vehicle with flashing, rotating, or oscillating, red and blue lights meeting the requirements of this section and the coroner has approved the request in writing;

(b) The coroner makes a written request to the legislative body of the county, urban-county, charter county, consolidated local government, or unified local government in which the coroner is elected to permit the deputy coroner to equip a publicly owned motor vehicle or privately owned motor vehicle, or both, and that request has been approved by the legislative body by ordinance or by court order;

(c) The deputy coroner may use the lights and siren only while responding to the scene of the report of the death of a human being and shall not, KRS 189.940 to the contrary notwithstanding, exceed the posted speed limit; and

(d) The permission granted pursuant to this section shall expire upon the coroner leaving office or the legislative body revoking the authorization.

NOTE: Because both House Bill 34 and House Bill 41 amended KRS 189.920, and because the amended language was in conflict, House Bill 34, which was enacted later, it is the controlling language in the following section. As a result, a small portion of House Bill 41 has been eliminated.

KRS 189.920 is amended to read as follows:

* * * * *

(6) (a) If authorized by the legislative body of a county, urban-county, charter county, consolidated local government, or unified local government;

1. All publicly owned county jail and regional jail vehicles used as emergency vehicles may be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible

under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle; and

2. An elected jailer or the chief administrator of a county or regional jail not managed by an elected jailer may equip one (1) personally owned vehicle with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle.

(b) Publicly owned county jail or regional jail vehicles shall not be equipped with or use a siren, whistle, or bell.

(c) The equipment prescribed by this subsection shall be in addition to any other equipment required by the motor vehicle laws.

(Remaining sections renumbered appropriately)

KRS 189.940 is amended to read as follows:

(1) Except as provided in KRS 189.920, the speed limitations set forth in the Kentucky Revised Statutes do not apply to emergency vehicles:

- (a) When responding to emergency calls; or
- (b) To police vehicles when in pursuit of an actual or suspected violator of the law; or
- (c) To ambulances when transporting a patient to medical care facilities; and
- (d) The driver thereof is giving the warning required by subsection (5)(a) and (b) of this section.

HOUSE BILL 119 - TRAINING OF CITY GOVERNMENT OFFICIALS.

SECTION 1. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

KRS 64.5277 Definitions for KRS 64.5277 to 64.5279

As used in KRS 64.5277 to 64.5279:

(1) "City" means:

(a) Any city of any class;

(b) An urban-county government that does not participate in the county officers training program under KRS 64.5275; and

(c) A consolidated local government that does not participate in the county officers training program under KRS 64.5275;

(2) "City officer" means:

(a) Any individual elected to a city office existing under KRS Chapter 83A;

(b) Any individual elected to a city office existing under KRS Chapter 67A or 67C, if the respective government does not participate in the county officers training program under KRS 64.5275;

(c) Any individual appointed to fill a vacancy in an elected city office as defined under paragraph (a) or (b) of this subsection; and

(d) Any individual serving in a nonelected city office as defined by KRS 83A.080 that is designated by the city as eligible for participation in the city officers training program in the ordinance adopted pursuant to KRS 64.5278;

(3) "Training unit" means fifteen (15) clock hours of attendance or participation in qualifying courses during a calendar year; and

(4) "Training incentive multiplier" means a number of one (1) to (4) that is used to calculate the final training incentive to be paid to a city officer eligible to participate in the training incentive program.

SECTION 2. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

KRS 64.5278 Ordinance establishing incentive program for city officers to obtain education training - Training incentive payments - Continuing education hours required - Proof of attendance and evaluation of courses.

(1) Any city may elect, by adopting an ordinance meeting the requirements of this section, to establish an incentive program for city officers to obtain educational training related to their duties and responsibilities as city officers and the functions of city governments.

(2) The ordinance shall apply to all elected city officers within the city, and the city may allow any nonelected city officer holding an office existing or created under KRS 83A.080 to participate in the incentive program.

(3) The ordinance shall designate a base training incentive payment amount that shall be awarded to the city officer for the completion of a training unit during service as a city officer within the city. This base incentive payment amount shall be no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500). The training incentive payment amount established in the ordinance shall not be adjusted by any index reporting changes to consumer prices or any other method to account for inflation.

(4) The ordinance shall require city officers to complete a number of continuing education hours equal to at least one (1) training unit during each calendar year in order to receive a training incentive payment.

(5) The ordinance shall state that the city shall award the training incentive payment to the city officer for the completion of a training unit during the calendar year. The training incentive payment awarded shall be the base training incentive payment multiplied by the training incentive multiplier earned by the city officer. The city officer shall accumulate no more than one (1) training incentive multiplier per calendar year of continuous service, for a maximum of four (4) training incentive multipliers.

(6) The ordinance shall provide that a city officer who fails to earn at least one (1) training unit in any calendar year shall receive no training incentive payment for that calendar year and shall have his or her training incentive multiplier reset to one (1) for the following year.

(7) The ordinance may permit the city officer to carry forward no more than fifteen (15) hours of excess credit hours earned in one (1) calendar year to apply to the minimum fifteen (15) hours training unit required in the next calendar year. "Excess hours" means credit hours earned beyond fifteen (15) during a single calendar year.

(8) The ordinance shall require the city officer to present proof of his or her completion of the annual training unit and shall establish the time that the city officers shall receive their training incentive payments.

(9) Each city shall, in the ordinance establishing the city officers training program, establish a policy regarding the reimbursement to the city officer, or payment to the provider for the city officer's attendance of an event hosting a course where the officer seeks to earn credit.

(10) The ordinance shall specify criteria for the presentation of proof of attendance by city officers and the criteria for the evaluation of a course's relevance to the duties and functions of city officers and the functions of city governments. In addition to other courses that may be deemed relevant by the city, courses that provide instruction on statutory powers and duties of cities and city officers, intergovernmental relationships, municipal finance and budgeting, municipal taxation, ethics, open records, open meetings, economic development, or municipal police powers shall satisfy the criteria established in the ordinance.

SECTION 3. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

KRS 64.5279 Repeal of training incentive program for city officers - Designation of incentive payments relative to retirement and compensation - Alternative incentives for continuing education and training.

(1) A city may, by ordinance, elect to repeal the training incentive program.

(2) The training incentive payments provided under KRS 64.5278 shall not be included in the calculation for a retirement allowance for any city officer participating in the County Employees Retirement System set out in KRS 78.510 to 78.852.

(3) Training incentive payments provided under KRS 64.5278 shall not be considered compensation and shall not be required to be included in the ordinance establishing the compensation of elected city officers under KRS 67C.129, 67C.131, 83A.070, or when applicable, KRS 64.610.

(4) Training incentive payments provided under KRS 64.5278 shall not be a factor in setting elected city officers' maximum compensation under KRS 83A.075(2).

(5) Nothing in KRS 64.5277 through 64.5279 shall be construed to prohibit a city from enacting or establishing alternative incentives for the continuing education and training of its elected officers or employees.

Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

(13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include

amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time. **Creditable compensation shall not include training incentive payments for city officers paid as set out in KRS 64.5277 through 64.5279;**

HOUSE BILL 121 "BATH SALTS" (MDPV)

EMERGENCY

SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1453 Trafficking in substituted cathinones -- Penalty.

(1) A person is guilty of trafficking in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully traffics in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone.

(2) Trafficking in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.

SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1454 Possession of substituted cathinone -- Penalty.

(1) A person is guilty of possession of naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully possesses naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone.

(2) Possession of naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.

SECTION 5. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1455 Manufacturing substituted cathinone -- Penalty.

(1) A person is guilty of manufacturing naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-

methyilmethcathinone when he or she knowingly and unlawfully manufactures naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, or 4-methyilmethcathinone.

(2) Unlawfully manufacturing naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, or 4-methyilmethcathinone is a Class A misdemeanor.

Section 4. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

* * * * *

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; *naphthylprovalerone; 3,4-methylenedioxyprovalerone; 3,4-methylenedioxymethylcathinone; 4-methyilmethcathinone;* Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic cannabinoid agonists or piperazines; salvia.

Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
 - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and

- (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, **naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone**, synthetic cannabinoid agonists or piperazines, salvia, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
- (a) The common or usual name of the drug, if such there be; and
- (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
- (a) Adequate directions for use; and
- (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by **administrative** regulations require as necessary for the protection of public health. No

such administrative regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

- (9) (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
- (b) If it is an imitation of another drug; or
- (c) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;
- (11) If:
 - (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
 - (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
- (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
 - (a) Such practitioner is licensed by law to administer such drug; and
 - (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
- (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

Section 7. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he or she, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, other than trafficking in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, ~~or~~ piperazines, ~~or~~ salvia, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

Section 9. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~ yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia.

Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - a) He or she knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, phencyclidine, synthetic cannabinoid agonists or piperazines, salvia, or marijuana; or
 - b) He or she knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class D felony.
 - (b) For a second or subsequent offense be guilty of a Class C felony.

Section 11. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, phencyclidine, synthetic cannabinoid agonists, ~~or~~ piperazines, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
- (a) For a first offense a Class A misdemeanor.
- (b) For a second or subsequent offense a Class D felony.

Section 12. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone pursuant to KRS 218A.1454, ~~or possession of~~ synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427, or salvia pursuant to KRS 218A.1451 may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself or herself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his or her treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the facility.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his or her designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services

rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.

(7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

(8) In the case of any person who has been convicted of possession of marijuana, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, ~~or possession of~~ synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

Section 13. KRS 218A.410 is amended to read as follows:

(1) The following are subject to forfeiture:

(a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;

(b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;

(c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;

(d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;

(e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;

(f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;

(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting

party or privy to a violation of this chapter;

2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission; and

4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,~~[—or]~~ synthetic cannabinoid agonists,~~[or]~~ piperazines, or salvia;

(i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;

(j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him or her to have been committed or omitted without his or her knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph; and

(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,~~[or]~~ synthetic cannabinoid agonists,~~[or]~~ piperazines, or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he or she is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to

forfeiture under this section.

Section 14. KRS 218A.992 is amended to read as follows:

(1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or

(b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.

(2) The provisions of this section shall not apply to a violation of KRS 218A.210, 218A.1426, 218A.1427, 218A.1428, 218A.1450, 218A.1451, ~~or~~ 218A.1452, **218.1453, 218.1454, [or] 218.1455.**

Section 15. KRS 530.064 is amended to read as follows:

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

(a) Illegal sexual activity; or

(b) Illegal controlled substances activity other than activity involving marijuana, **naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,** synthetic cannabinoid agonists or piperazines, or salvia as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

(2) Unlawful transaction with a minor in the first degree is a:

(a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;

(b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) Class A felony if the minor so used incurs physical injury thereby.

Section 16. KRS 218A.010 is amended to read as follows:

As used in this chapter:

* * * * *

(39) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; **(1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);** or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;

Section 16. Whereas, the substances specified in Sections 1 to 15 of this Act are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of this substance immediately

in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

HB 173 - HUNTING AND FISHING LICENSES.

Section 1. KRS 150.170 is amended to read as follows:

* * * * *

(9) Any member of the Kentucky Army or Air National Guard, Active duty or Reserve Component, in any branch in the United States Armed Forces that is based in the Commonwealth of Kentucky, shall have the right to take fish or hunt on any military property belonging to the Commonwealth without procuring any sport hunting or sport fishing license.

HOUSE BILL 229 - PUBLIC EMPLOYEES.

Section 1. KRS 18A.205 is amended to read as follows:

(1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of state employees. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as the commissioner of insurance approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for state employees, except that the procuring is permissive.

(2) The term "state employee," for purposes of KRS 18A.205 to 18A.215, shall mean a person who is regularly employed by any department, board, agency, or branch of state government, and who is also:

(a) A contributing member of any one (1) of the state-administered retirement systems[~~administered by the state~~]; or

(b) A retiree of a state-administered retirement system who is employed in a regular full-time position for purposes of retirement coverage, but who is not eligible to contribute to one (1) of the systems administered by Kentucky Retirement Systems pursuant to subsection (17) of KRS 61.637.

Notwithstanding the definition of "state employee" in this subsection,~~provided, however, that~~ any federally funded time-limited employee may receive insurance coverage.

(3) The term "premiums," for the purposes of KRS 18A.205 to 18A.225, shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

Section 2. KRS 61.510 is amended to read as follows:

As used in KRS 61.510 to 61.705, unless the context otherwise requires:

* * * * *

(14) "Final compensation" of a member means:

(a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the

number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;

(c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

(d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. **If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years shall be used; or**

Section 3. KRS 61.637 is amended to read as follows:

(1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.510 to 61.705 and 78.510 to 78.852 and who is reemployed as an employee by a participating agency prior to August 1, 1998, shall have his retirement payments suspended for the duration of reemployment. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.

(2) Employer and employee contributions shall be made as provided in KRS 61.510 to 61.705 and 78.510 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.

(3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.

(4) (a) Notwithstanding the provisions of this section, the payments suspended in

accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment.

(b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment.

(c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:

1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;

2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);

3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;

4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691; and

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.

(5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).

(6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095.

(b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.

(7) (a) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same

retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.

(b) A retired member whose disability retirement was discontinued pursuant to KRS 61.615 and who is reemployed in one (1) of the systems administered by the Kentucky Retirement Systems prior to his or her normal retirement date shall have his or her accounts combined upon termination for determining eligibility for benefits. If the member is eligible for retirement, the member's service and creditable compensation earned as a result of his or her reemployment shall be used in the calculation of benefits, except that the member's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance. The member shall not change beneficiary or payment option designations. This provision shall apply to members reemployed on or after August 1, 1998.

(8) A retired member or his employer shall notify the retirement system if he has accepted employment with an agency that participates in the retirement system from which the member retired.

(9) If the retired member is under a contract, the member shall submit a copy of that contract to the retirement system, and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits.

(10) If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of the member's initial retirement date in a position that is required to participate in the same retirement system from which the member retired, the member's retirement shall be voided and the member shall repay to the retirement system all benefits received. The member shall contribute to the member account established for him prior to his voided retirement. The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation.

(11) (a) If a member of the Kentucky Employees Retirement System retires from a department which participates in more than one (1) retirement system and is reemployed within one (1) month of his initial retirement date by the same department in a position participating in another retirement system, the retired member's retirement allowance shall be suspended for the first month of his retirement and the member shall repay to the retirement system all benefits received for the month.

(b) A retired member of the County Employees Retirement System who after initial retirement is hired by the county from which the member retired shall be considered to have been hired by the same employer.

(12) (a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of the member's termination by the same employer, the member shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position from which he retired and for the position in which he has been reemployed.

(b) The job descriptions and statements of duties shall be filed with the retirement office.

(13) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's termination;

(b) The retired member shall repay to the retirement system all benefits paid from systems administered by Kentucky Retirement Systems under reciprocity, including medical insurance benefits, that the member received after reemployment began;

(c) Upon termination, or subsequent to expiration of the six (6) month period from the date of termination, the retired member's retirement allowance based on his initial retirement account shall no longer be suspended and the member shall receive the amount to which he is entitled, including an increase as provided by KRS 61.691;

(d) Except as provided in subsection (7) of this section, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after the member's date of reemployment shall be credited to the second member account; and

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(14) (a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, the member shall contribute to a second member account in the retirement system.

(15) (a) If a retired member is reemployed at least one (1) month after initial retirement in a different position, or at least six (6) months after initial retirement in the same position, and prior to normal retirement age, the retired member shall contribute to a second member account in the retirement system and continue to receive a retirement allowance from the first member account.

(b) Service credit gained after reemployment shall be credited to the second member account. Upon termination, the retired member shall be entitled to benefits payable from the second member account.

(16) A retired member who is reemployed and contributing to a second member account shall not be eligible to purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 which he was eligible to purchase prior to his initial retirement.

(17) Notwithstanding any provision of subsections (1) to (7) (a) and (10) to (15) of this section, the following shall apply to retired members who are reemployed by an agency participating in one (1) of the systems administered by Kentucky Retirement Systems on or after September 1, 2008:

(a) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, or has filed the forms required to receive a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems or is employed in a position that is not considered regular full-time with an agency participating in one (1) of the systems administered by Kentucky Retirement Systems within three (3) months following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:

1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and

2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable

compensation earned after his or her initial retirement was voided;

(b) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems after a three (3) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:

1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for the employee to return to work with the participating agency. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (a) of this subsection shall apply to the member and the employer;

2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;

3. The employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and

4. The employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium;

(c) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System within one (1) month following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:

1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and

2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided; and

(d) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System after a one (1) month period following the member's initial retirement date, the member may continue to receive his or

her retirement allowance during the period of reemployment subject to the following provisions:

1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for the employee to return to work with the participating agency. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (c) of this subsection shall apply to the member and the employer;
2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;
3. The employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and
4. The employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium.

Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

(14) "Final compensation" means:

(a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;

(c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

(d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the

member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. **If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years shall be used; or**

Section 5. KRS 78.530 is amended to read as follows:

(1) (a) Each county and school board, as defined in KRS 78.510, will participate in the system by appropriate order authorizing such participation which has been entered and duly recorded in the records of the governing body of the county or school board. In cases where general purpose county government does not participate, but the sheriff and his employees or the county clerk and his employees do, the sheriff or the clerk shall retain the order in his office. The authority to issue and properly record such order of participation being hereby granted, permits such county to participate in the system. The effective date of such participation shall be fixed in the order.

(b) Notwithstanding any statute to the contrary, after April 9, 2002, the systems shall deny the request for participation of any agency which does not have an irrevocable contract with the state Personnel Cabinet for health insurance coverage under KRS 18A.225 **to 18A.229** for its active employees, except that:

1. County governments entering the system between April 9, 2002, and July 1, 2003, under this section shall be excluded from this requirement; and

2. Agencies entering the system on or after April 9, 2002, which were established by a merger or an interlocal agreement to provide public services shall be excluded from this requirement if all agencies entering into the merger or interlocal agreement had an initial participation date with the system prior to April 9, 2002.

(2) Once a county or school board participates, it shall thereafter continue to participate, except as provided in KRS 78.535.

(3) (a) Concurrent with the adoption of the appropriate resolution to participate in the system, a county may elect the alternate participation plan which will require the county to purchase on behalf of each employee electing coverage, at the time the county elected to participate in the system as provided under KRS 78.540(2), current service credit for employment in regular full-time positions between July 1, 1958, and the participation date of the county. Cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 shall be required to purchase on behalf of each employee electing coverage only as much service credit as the employee has accumulated in the city-administered plan, up to the participation date of the city. Accumulated service shall include service for which an employee received a refund pursuant to KRS 95.620 or 95.866, if such refund has been repaid. If the employee has not yet repaid the refund, he may make payment to the system by any method acceptable to the system, and the requirement of five (5) years of continuous reemployment prior to repayment of refunds shall not apply. Upon the employee's repayment, the city shall purchase the associated service credit for the employee. Cost of such service credit over and above that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of such actuarial service shall be paid by the county;

(b) The county shall establish a payment schedule subject to approval by the board for payment of the cost of such service over and above that which would be funded within the existing employer contribution rate. The maximum period allowed in a payment schedule shall be thirty (30)

years, with interest at the rate actuarially assumed by the board. A shorter period is desirable and the board may approve any payment schedule provided it is not longer than a thirty (30) year period, except that cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 may, at their option, extend the payment schedule to a maximum of thirty (30) years, may choose to make level payments at the interest rate actuarially assumed by the board over the life of the payment schedule chosen, and may retain employer contributions and the earnings thereon attributable to employees electing coverage;

(c) A city entering the system under the alternate participation plan, may, by ordinance, levy a special property tax to pay for current service credit purchased for the period between July 1, 1958, and the participation date of the city. The special tax shall be to pay, within a period of no more than fifteen (15) years, for the cost of such service credit over that which would be funded within the existing employer contribution rate, as determined by the board's consulting actuary. The reason for levying the special tax and the disposition of the proceeds shall be part of the ordinance levying the tax. The special tax shall be rescinded when the unfunded prior service liability has been amortized, and shall not be subject to the provisions of KRS 132.017 or 132.027. In addition, the city may maintain any tax, the proceeds of which had been devoted to funding pension obligations under the locally administered plan prior to participation in the system, for the purpose of funding current service costs incurred after the date of participation. The city may increase the tax to pay current service costs which exceed the local pension system costs to which the tax had been devoted, but the city shall not collect from the tax more revenues than are necessary to pay current service costs incurred after the date of participation. The city may continue the tax so long as it participates in the system, and the tax shall not be subject to the provisions of KRS 132.017 or 132.027. The city shall not collect either tax authorized by this paragraph if its participation has been terminated pursuant to KRS 78.535;

(d) The county may at a later date purchase current service credit from July 1, 1958, to the participation date of the county by alternate participation plan for those employees who rejected membership in the system at the time the county first participated. In addition, the employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit over and above that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by adding it to the existing payment schedule established under paragraph (b) of this subsection;

(e) A county which did not participate by alternate participation may, until July 1, 1991, purchase current service credit for those employees who rejected membership in the system at the time the county first participated. The employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. The county shall pay the cost of the service credit by lump sum or by establishing a payment schedule under paragraph (b) of this subsection; and

(f) A county which participated in the system but did not elect the alternate participation plan may at a later date elect the alternate participation plan. In this case, the county shall purchase on behalf of each employee participating in the system current service credit for employment in regular full-time positions between July 1, 1958, or a later date selected by the county government, and the participation date of the county. The county shall also purchase, for employees who decide to participate when the county elects the alternate participation plan, current service credit for employment in regular full-time positions between July 1, 1958, or the later date selected by the county government, and the participation date of the county. In addition, the county shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit over that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by a payment schedule established under paragraph (b) of this subsection.

(4) Every school board not participating on June 21, 1974, shall enact a resolution of participation no later than July 1, 1976.

(5) The order of the governing body of a county, as provided for in subsection (1) of this section, may exclude from participation in the system hospitals and any other semi-independent agency. Each such excluded agency shall be identified in the order authorizing participation and such excluded agency may participate in the system as a separate agency.

(6) An agency whose participation in the County Employees Retirement System has been terminated by the board of trustees in accordance with KRS 78.535 may at a later date request participation in the retirement system by the adoption of an appropriate order as authorized by subsection (1) of this section. The board may accept the participation of such agency provided it is determined that such participation is in the best interest of the agency, the employees thereof and the County Employees Retirement System.

(7) (a) After August 1, 1988, except as permitted by KRS 65.156, no local government retirement system shall be created pursuant to KRS 70.580 to 70.598 and any local government retirement systems created pursuant to KRS 79.080, 90.400, 90.410, 95.768, and KRS Chapter 96 shall be closed to new members. New employees who would have been granted membership in such retirement systems shall instead be granted membership in the County Employees Retirement System. Employees who would have been granted membership in retirement systems created pursuant to KRS 95.768, or any other policemen or firefighters who would have been granted membership in retirement systems created pursuant to KRS 79.080, 90.400, or 90.410, or any such policemen or firefighter members employed on or prior to August 1, 1988, who transfer to the County Employees Retirement System, shall be certified by their employers as working in hazardous positions. Each city participating in the County Employees Retirement System pursuant to this subsection shall execute the appropriate order authorizing such participation, shall select the alternate participation plan as described in subsection (3) of this section, and shall pay for the actuarial services necessary to determine the additional costs of alternate participation. Cities which closed their local pension systems to new members and participated in the system prior to July 15, 1988, whose employees at the time of transition were given the option to join the system shall not be required to offer said employees a second option to join the system.

(b) Notwithstanding any statute to the contrary, after April 9, 2002, the systems shall deny the request for participation of any agency which does not have an irrevocable contract with the state Personnel Cabinet for health insurance coverage under KRS 18A.225 to 18A.229 for its active employees, except that agencies entering the system on or after April 9, 2002, which were established by a merger or an interlocal agreement to provide public services shall be excluded from this requirement if all agencies entering into the merger or interlocal agreement had an initial participation date with the system prior to April 9, 2002.

(8) Any city which closed a police and firefighter pension plan to new members between January 1, 1988, and July 15, 1988, and participated in the system under the alternate participation plan shall, if its police and firefighters were not covered by Social Security, or any city which operates a pension under KRS 90.400 or 90.410, shall be required to certify that its police and firefighters are working in hazardous positions, and shall offer its police and firefighters in service at the time of entry a second option to participate under hazardous duty coverage if they were not offered hazardous duty coverage at the time of their first option. The provisions of subsection (3)(b) of this section notwithstanding, a city affected by this subsection may, at its option, extend its payment schedule to the County Employees Retirement System for alternate participation to thirty (30) years at the rate actuarially assumed by the board.

Section 6. If an agency meets the requirements of the exception provided in subsection (1)(b)2. of Section 5 of this Act, but was required under KRS 78.530 prior to the effective date of this Act to sign a contract with the Personnel Cabinet to provide its employees with health insurance coverage through the Public Employees Health Insurance Plan as a condition of its participation in the County Employees Retirement System, then the agency shall be eligible to opt out of the health insurance contract by notifying the secretary of the Personnel Cabinet.

HOUSE BILL 242 - METALS.

Section 1. KRS 433.890 is amended to read as follows:

(1) Every recycler, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, collector of or dealer in articles found in ashes, garbage, or other refuse, whether such dealers, collectors, or vendors have established places of business or operate a business of an itinerant nature, shall, with regard to any catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rails, nonferrous metal or an alloy thereof, or an object containing nonferrous metal or an alloy thereof:

(a) Keep a register that contains:

1. A photocopy of a valid driver's license or other government-issued identification card or document which contains the name, photograph, and signature of the seller. If the purchaser has a copy of the seller's valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser references the number on the identification document in the register at the time of each purchase; and

2. The state and license number of the motor vehicle used to transport the purchased catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof, to the place of purchase, which shall be

provided by the seller of the items;

3. The time and date of the transaction;

4. A description in the usage of the trade of the kind and weight of the railroad rail, nonferrous metal or an alloy thereof, or object containing the nonferrous metal or an alloy thereof purchased; and

5. The amount paid for the material and the unit basis of the purchase, such as by ounce or pound, etc.;

(b) Not purchase any metal that has been smelted, burned, or melted unless, in addition to the other requirements of this subsection, the seller provides the following and the purchaser maintains a copy thereof:

1. A signed certificate of ownership stating that he or she is the owner of the metal and is entitled to sell it; or

2. A signed certificate from the owner of the metal stating that he or she is the owner of the metal and that the person selling the metal is authorized to sell the metal on behalf of the owner;

(c) [(b)] Not purchase any catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or an object containing nonferrous metal or an alloy thereof from a person who:

1. Is less than eighteen (18) years of age; or

2. Is unable or refuses to provide the identification and information required in paragraph (a) of this subsection;

INTERVENING SECTIONS RELETTERED APPROPRIATELY

(h) [(g)] Comply with a written request pursuant to paragraph **(g) [(f)]** of this subsection until a written notice to cease sending the reports required by paragraph **(g) [(f)]** of this subsection is received by the purchaser. A request may relate to:

1. All records of purchases;

2. Records of a specific class of metals or items purchased;

3. Records of purchases during a specific period of time; or

4. Records of a specific purchase or purchases; and

REMAINING SECTIONS RELETTERED APPROPRIATELY

HOUSE BILL 272 - PEACE OFFICER CERTIFICATION EMERGENCY

Section 1. KRS 15.400 is amended to read as follows:

(1) The effective date of KRS 15.380 to 15.404 shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of KRS 15.380 to 15.404 and shall be granted certified status as long as they:

(a) Remain in continuous employment of the agency by which they were employed as of December 1, 1998, and are employed within one hundred (100) ~~[sixty (60)]~~ days by another law enforcement agency subject to the provisions of KRS 15.380 to 15.404;

(b) Retired from employment with certified status on or after July 1, 2008, and are reemployed no later than one hundred (100) days from the effective date of this Act by a law enforcement agency subject to KRS 15.380 to 15.404; or

REMAINING SECTION RELETTERED APPROPRIATELY

Section 1. Whereas it is increasingly difficult to find experienced certified police officers, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming a law.

HOUSE BILL 289 - OPERATION OF A MOTOR VEHICLE

Section 1. KRS 189.960 is amended to read as follows:

1) The operator of a vehicle shall yield the right-of-way to any public safety vehicle, **as defined in KRS 189.910(2), or any** pedestrian actually engaged in work upon a highway or within any highway construction or maintenance area indicated by official traffic control devices.

(2) The operator of a vehicle shall yield the right-of-way to any public safety vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of KRS 189.920**(4)** ~~[(3)]~~.

Section 2. KRS 189.394 is amended to read as follows:

(1) The fines for speeding in violation of KRS 189.390 shall be:

| Prima Facie or Maximum Speed | | | | | | | | | | | | | |
|------------------------------|----|----|----|----|----|----|----|----|----|----|----|-----------|------|
| Mph. Over Limit | 15 | 20 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | <u>70</u> | Fine |
| 1 | 16 | 21 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | <u>71</u> | \$1 |
| 2 | 17 | 22 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | <u>72</u> | 2 |
| 3 | 18 | 23 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | <u>73</u> | 3 |
| 4 | 19 | 24 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | <u>74</u> | 4 |
| 5 | 20 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | <u>75</u> | 5 |
| 6 | 21 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | <u>76</u> | 16 |
| 7 | 22 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | <u>77</u> | 17 |
| 8 | 23 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | <u>78</u> | 18 |
| 9 | 24 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | <u>79</u> | 19 |
| 10 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | <u>80</u> | 20 |
| 11 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | 76 | <u>81</u> | 22 |
| 12 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | 77 | <u>82</u> | 24 |
| 13 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | 78 | <u>83</u> | 26 |
| 14 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | 79 | <u>84</u> | 28 |

REMAINDER OF CHART UNCHANGED**Section 3. KRS 189.292 is amended to read as follows:**

(1) As used in this section, "personal communication device" means a device capable of two (2) way audio or text communication that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers communication to the possessor, including but not limited to a paging device and a cellular telephone.

(2) Except as provided in subsection (3) of this section, no person shall, while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication, including but not limited to communications referred to as a text message, instant message, or electronic mail.

(3) Subsection (2) of this section shall not apply to:

(a) The use of a global positioning system feature of a personal communication device;

(b) The use of a global positioning or navigation system that is physically or electronically integrated into the motor vehicle;

INTERVENING SECTIONS RELETTERED APPROPRIATELY

(4) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.

Section 4. KRS 189.294 is amended to read as follows:

(1) As used in this section, "personal communication device" shall have the same meaning as defined in KRS 189.292.

(2) Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.

(3) Use of a personal communication device does not include a stand-alone global positioning system, **a global positioning or navigation system that is physically or electronically integrated into the motor vehicle,** or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.

(4) This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.

(5) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.

Section 5. KRS 186.412 is amended to read as follows:

(14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of **two dollars (\$2)**~~[one dollar (\$1)]~~ paid to the circuit clerk, **two (2)**~~[a]~~ medical insignia **decals**~~[decal]~~ that may be affixed to the **driver's**~~[lower-left]~~ side of the front windshield of a motor vehicle **and to the driver's side of the rear window of a motor vehicle**.

HOUSE BILL 302 - HISTORIC MILITARY EVENTS

EMERGENCY

Section 1. KRS 38.440 is amended to read as follows:

(1) **Except as permitted in subsections (2), (3), and (4),** no persons other than the Kentucky National Guard or Kentucky active militia shall associate together as an armed company or drill or parade with arms without permission from the Governor.

(2) ~~[Benevolent and social organizations may wear swords and]~~Students in educational institutions chartered under the laws of Kentucky, in which military science is part of the course of instruction, may drill and parade with arms in public under the supervision of their instructors.

(3) **Veterans' service organizations may wear swords and may drill or parade with arms in public.**

(4) **People participating in the reenactment of a historical military event from the French and Indian War, Revolutionary War, War of 1812, United States Civil War, or Spanish-American War may wear swords and may drill or parade with arms in public.**

Section 2. Whereas activities planned by the Commission on the War of 1812 Bicentennial will commence in coming months, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

HOUSE BILL 308 - BACKGROUND CHECKS.

SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

KRS 237.108 Persons adjudicated mentally defective and committed to mental institutions -- Identifying information to be forwarded to Department of Kentucky State Police and Federal Bureau of Investigation -- Information to be included in National Instant Criminal Background check System database -- Petition to court for relief from prohibition against possession of firearms -- Prohibition against allowing improper use of information obtained by Kentucky State Police.

(1) **A court that orders a commitment or makes a finding or adjudication under which a person becomes subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) shall order the circuit clerk to forward the person's name and non-clinical identifying information, including the person's Social Security number and date of birth, along with a copy of the order of commitment to the Department of Kentucky State Police, which in turn shall forward the information to the Federal Bureau of Investigation, its successor agency, or agency designated by the Federal Bureau of Investigation, for inclusion in the National Instant Criminal Background Check System database. The court shall also notify the**

person of the prohibitions of 18 U.S.C. sec. 922(d)(4) and (g)(4).

(2) A person who is subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) because of a commitment, finding, or adjudication that occurred in this state may petition the court in which such commitment, finding, or adjudication occurred to remove, pursuant to Section 105(a) of Pub. L. No. 110-180, the disabilities imposed under 18 U.S.C. sec. 922(d)(4) and (g)(4). A copy of the petition for relief shall also be served on the director of the Division of Behavioral Health and the county attorney of the county in which the original commitment, finding, or adjudication occurred. The director of the Division of Behavioral Health and the county attorney may, as each deems appropriate, appear, support, object to, or present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner concerning:

(a) The circumstances of the original commitment, finding, or adjudication;

(b) The petitioner's mental health and criminal history records, if any;

(c) The petitioner's reputation;

(d) The petitioner's date of birth and Social Security number; and

(e) Changes in the petitioner's condition or circumstances relevant to the relief sought. The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but it shall remain confidential and be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.

(3) When the court issues an order granting a petition for relief under subsection (2) of this section, the circuit clerk shall immediately forward a copy of the order to the Department of Kentucky State Police, which in turn shall immediately forward a copy to the Federal Bureau of Investigation, or its successor agency, for updating of the National Instant Criminal Background Check System database and shall remove all information in any database over which the department exercises control relating to the person whose relief from disability is granted and shall immediately destroy all paper copies of the order of commitment and other documents relating to the matter.

(4) If a petition is granted under this section, the order, finding, or adjudication for which relief is granted shall, pursuant to Section 105(a) of Pub. L. No. 110-180, be deemed not to have occurred for purposes of 18 U.S.C. sec. 922(d)(4) and (g)(4).

(5) The Department of Kentucky State Police shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.

(6) The provisions of this section shall supersede any other statute to the contrary for the purposes set forth in this section but otherwise shall be held and construed as ancillary and supplemental to any other statute.

SECTION 2. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

KRS 17.185 Request to Department of Kentucky State Police to conduct background check on oneself through name-based or fingerprint-supported search -- Definitions for section -- Prerequisites and limitations on search and release of information -- Fees --

Administrative regulations.

(1) As used in this section:

(a) "Fingerprint card" means the standard Federal Bureau of Investigation FD-258 fingerprint card;

(b) "Fingerprint-supported background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the fingerprints of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation; and

(c) "Name-based background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the name, date of birth, and Social Security number of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation.

(2) Any other provision of law to the contrary notwithstanding, a person may request the Department of Kentucky State Police to conduct a name-based or fingerprint-supported background check of himself or herself and release the results to any person designated by the requester.

(3) A person requesting a fingerprint-supported background check on himself or herself shall be fingerprinted by a law enforcement agency or other agency approved by the Department of Kentucky State Police to submit fingerprints. The fingerprinting agency shall forward the fingerprint card to the Department of Kentucky State Police. The fingerprinting agency may charge a fee, not to exceed the actual cost of processing the request.

(4) A request for a name-based or fingerprint-supported background check shall be submitted on forms approved by the Department of Kentucky State Police.

(5) The Department of Kentucky State Police may charge a fee for conducting a background check, not to exceed the actual cost of processing the request, to be paid by the requester.

(6) The Department of Kentucky State Police shall promulgate administrative regulations to implement the provisions of this section.

HOUSE BILL 313 - CONCEALED DEADLY WEAPONS.

Section 1. KRS 527.020 is amended to read as follows:

(1) A person is guilty of carrying a concealed weapon when he or she carries concealed a firearm or other deadly weapon on or about his or her person.

(2) Peace officers and certified court security officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their person.

(3) **The director of the Division of Law Enforcement in the Department of Fish and Wildlife Resources, conservation officers of the Department of Fish and Wildlife Resources, and** policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so **by law or** by the government employing the officer.

(4) Persons, except those specified in subsection (5) of this section, licensed to carry a concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly

weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section. Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried. No person or organization, public or private, shall prohibit a person licensed to carry a concealed deadly weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle in compliance with the provisions of KRS 237.110 and 237.115. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.

(5) (a) The following persons, if they hold a license to carry a concealed deadly weapon pursuant to KRS 237.110, may carry a firearm or other concealed deadly weapon on or about their persons at all times and at all locations within the Commonwealth of Kentucky, without any limitation other than as provided in this subsection:

1. A Commonwealth's attorney or assistant Commonwealth's attorney;
2. A county attorney or assistant county attorney;
3. A justice or judge of the Court of Justice; and
4. A retired or senior status justice or judge of the Court of Justice.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(c) A person specified in this section who is issued a concealed deadly weapon license shall be issued a license which bears on its face the statement that it is valid at all locations within the Commonwealth of Kentucky and may have such other identifying characteristics as determined by the Department of Kentucky State Police.

(6) (a) Except provided in this subsection, the following persons may carry concealed deadly weapons on or about their person at all times and at all locations within the Commonwealth of Kentucky:

1. An elected sheriff and full-time and part-time deputy sheriffs certified pursuant to KRS 15.380 to 15.404 when expressly authorized to do so by the unit of government employing the officer;
2. An elected jailer and a deputy jailer who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the jailer; and
3. The department head or any employee of a corrections department in any jurisdiction where the office of elected jailer has been merged with the office of sheriff who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the unit of government by which he or she is employed.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in

charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(7) (a) A full-time paid peace officer of a government agency from another state or territory of the United States or an elected sheriff from another territory of the United States may carry a concealed deadly weapon in Kentucky, on or off duty, if the other state or territory accords a Kentucky full-time paid peace officer and a Kentucky elected sheriff the same rights by law. If the other state or territory limits a Kentucky full-time paid peace officer or elected sheriff to carrying a concealed deadly weapon while on duty, then that same restriction shall apply to a full-time paid peace officer or elected sheriff from that state or territory.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(8) A **loaded or unloaded** firearm or other deadly weapon shall not be deemed concealed on or about the person if it is located in **any enclosed container, [a-glove] compartment, or storage space** ~~regularly~~ installed **as original equipment** in a motor vehicle by its manufacturer, **including but not limited to a glove compartment, center console, or seat pocket**, regardless of whether said **enclosed container, storage space, or** compartment is locked, unlocked, or does not have a locking mechanism. No person or organization, public or private, shall prohibit a person from keeping a **loaded or unloaded** firearm or ammunition, or both, or other deadly weapon in a ~~[glove compartment of a]~~ vehicle in accordance with the provisions of this subsection. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction. **This subsection shall not apply to any person prohibited from possessing a firearm pursuant to KRS 527.040.**

(9) Carrying a concealed weapon is a Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.

HOUSE BILL 320 - FIRST RESPONDERS.

**SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:
KRS 2.152 9/11 First Responders Day.**

(1) The eleventh day of September each year shall be observed in Kentucky as "9/11 First Responders Day."

(2) The Governor is authorized and requested to issue a proclamation annually recognizing "9/11 First Responders Day" honoring those men and women who rushed, without hesitation, to save lives as our nation and its people were attacked by terrorists on September 11, 2001. The purpose of "9/11 First Responders Day" is to ensure that we never forget the tragic events of September 11, 2001, and to protect and preserve the honor that is duly deserved for those who responded to the unprecedented emergency on that day.

HOUSE BILL 333 - FIREWORKS EMERGENCY

SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

KRS 227.752 Storage of consumer fireworks, display fireworks, and theatrical pyrotechnic devices -- Report to state fire marshal and local fire chief required -- Contents and time of filing of reports --Consequences of failure to submit a report.

(1) For the purposes of this section, "APA 87-1" means the latest document: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics written by the American Pyrotechnic Association (APA).

(2) The storage of consumer fireworks, display fireworks, or theatrical pyrotechnic devices, as defined in APA 87-1, at retail, wholesale, storage, or manufacturing facilities shall be reported in writing to the state fire marshal and the local fire chief of the jurisdiction where the facilities are located.

(a) The report shall be completed by the owner or lessee of the property or the supplier of the fireworks, and shall include the address of the facility, the location of the fireworks to be stored, a copy of the shipping bill, and whether they are consumer fireworks, theatrical pyrotechnic devices, or display fireworks.

(b) The initial report for permanent business establishments open year round shall be submitted between January 1, 2012, and January 31, 2012, for existing business and fifteen (15) days before storage begins for new businesses. The report for permanent business establishments open year round shall be updated annually and upon a change in location of the stored items.

(3) Seasonal retailers, as defined in KRS 227.715, shall submit, at least fifteen (15) days prior to opening for sale each year, a report to the state fire marshal and the local fire chief of the jurisdiction identifying:

(a) The address where the sales will be taking place;

(b) The address where the fireworks will be stored; and

(c) A description of how the fireworks will be stored. Only one (1) report is due if the seasonal retailer stores the same product at the same location for both the June 10 through July 7 and December 26 through January 4 seasons.

(4) Failure to submit a report required under this section shall be cause to cease and desist operation of the facility or site until such time as the required information is properly submitted. Inspectors shall notify the permit holder in writing and may allow twenty-four (24) hours to remedy the violation, unless the violation poses a distinct fire hazard.

Section 2. KRS 227.700 is amended to read as follows:

As used in KRS 227.700 to 227.750, [The term] "fireworks" means [shall mean] any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks" [common] as defined in Section 3 of this Act or "display [special] fireworks as defined in KRS 227.706 and as set forth in the United States Department of Transportation's (DOT) hazardous materials regulations. "Fireworks" does not include:

- (1) Exception number 1: Toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with DOT regulations, and packed and shipped according to said regulations, are not considered to be fireworks and shall be allowed to be used and sold at all times.
- (2) Exception number 2: Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models are not considered to be fireworks.
- (3) Exception number 3: Propelling or expelling charges consisting of a mixture of sulfur, charcoal, and saltpeter are not considered as being designed for producing audible effects.

Section 3. KRS 227.702 is amended to read as follows:

As used in KRS 227.700 to 227.750, "consumer"~~[Common]~~ fireworks **"means"**~~[are]~~ fireworks **that are** suitable for use by the public, ~~[and]~~ designed primarily to produce visible effects by combustion, ~~[and]~~ ~~[must]~~ comply with the construction, chemical composition, and labeling regulations of the United States Consumer **Product**~~[Products]~~ Safety Commission. The types, sizes, and amount of pyrotechnic contents of these devices are limited as enumerated in this section. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing fifty (50) mg. or less of explosive composition, and aerial devices containing one hundred thirty (130) mg. or less of explosive composition. **Consumer**~~[Common]~~ fireworks are **further defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts 1500 and 1507, are** classified as **Division 1.4G**~~[class C]~~ explosives by the United States Department of Transportation, and include the following:

- (1) Ground and hand-held sparkling devices.
- (a) Dipped stick-sparkler **or wire sparkler. These devices consist of a metal wire or wood dowel that has been**~~[Stick or wire]~~ coated with pyrotechnic composition. **Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to**~~[that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed]~~ one hundred (100) grams **of pyrotechnic composition** per item. Those devices containing any perchlorate or chlorate salts may not exceed five (5) grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item are not included in this category, in accordance with DOT regulations;
- (b) Cylindrical fountain. Cylindrical tube~~[not more than three-fourths (3/4) in. (19 mm) inside diameter,]~~ containing **not more than**~~[up to]~~ seventy-five (75) grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect **or smoke**, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain). **When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;**
- (c) Cone fountain. Cardboard or heavy paper cone containing up to fifty (50) grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. **When more than one (1) cone is mounted on a common base, the total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;**
- (d) Illuminating torch. Cylindrical tube containing up to one hundred (100) grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held. **When more than one (1) tube is mounted on a common base, total pyrotechnic composition**

may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;

(e) Wheel. ~~A~~**[Pyrotechnic]** device attached to a post or tree by means of a nail or string. ~~A~~**[Each]** wheel may **have one (1) or more drivers, each of which may contain not more than**~~[contain up to six (6) "driver" units: tubes not exceeding one-half (1/2) in. (12.5 mm) inside diameter and containing up to]~~ sixty (60) grams of pyrotechnic composition. **No wheel may contain more than two hundred (200) grams total pyrotechnic composition.** Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect;

(f) Ground spinner. Small device **containing not more than twenty (20) grams of pyrotechnic composition,** similar **in operation** to a wheel **but intended to be**~~[in design and effect and]~~ placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device;~~[and]~~

(g) Flitter sparkler. Narrow paper tube **attached to a stick or wire and** filled with **not more than one hundred (100) grams of** pyrotechnic composition that produces color and sparks upon ignition. ~~[This device does not have a fuse for ignition.]~~The paper at one (1) end of the tube is ignited to make the device function; **and**

(h) Toy smoke device. Small plastic or paper item containing not more than one hundred (100) grams of pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect;

(2) Aerial devices.

(a) Sky **rockets and bottle rockets. Cylindrical tube containing not more than** ~~[rocket. Tube not exceeding one-half (1/2) in. (12.5 mm) inside diameter that may contain up to]~~ twenty (20) grams of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of flight;

(b) Missile-type rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;

(c) Helicopter, aerial spinner. A tube~~[not more than one-half (1/2) in. (12.5 mm) inside diameter and]~~ containing up to twenty (20) grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight;

(d) Roman candles. Heavy paper or cardboard tube~~[not exceeding three-eighths (3/8) in. (9.5 mm) inside diameter and]~~ containing up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several second intervals;~~[and]~~

(e) Mine, shell. Heavy cardboard or paper tube **usually**~~[up to two and one-half (2 1/2) in. (63.5 mm) inside diameter]~~ attached to a wood or plastic base and containing up to **sixty (60)**~~[forty (40)]~~ grams of **total chemical composition (lift charge, burst charge, and visible or audible effect)**~~[pyrotechnic composition]~~. Upon ignition, "stars," **components producing reports containing up to one hundred thirty (130) milligrams of explosive composition per report**~~[firecrackers]~~, or other devices are propelled into the air. **The term "mine" refers to a device with no internal components containing a bursting charge, and the term "shell" refers to a device that propels a component that subsequently bursts open in the air. A mine or shell device may contain more than one (1) tube provided the tubes fire in sequence upon ignition of one (1) external fuse. The term "cake" refers to a dense-packed collection of mine or shell tubes. Total chemical composition including lift charges of any multiple tube devices may not exceed two hundred (200) grams. The maximum quantity of lift charge**

in any one (1) tube of a mine or shell device shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any component shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the component. The tube remains on the ground; and

(f) Aerial shell kit, reloadable tube. A package kit containing a cardboard, high-density polyethylene (HDPE), or equivalent launching tube with multiple-shot aerial shells. Each aerial shell is limited to a maximum of sixty (60) grams of total chemical composition (lift charge, burst charge, and visible or audible effect composition), and the maximum diameter of each shell shall not exceed one and three-fourths (1-3/4) inches. In addition, the maximum quantity of lift charge in any shell shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any shell shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the shell. The total chemical composition of all the shells in a kit, including lift charge, shall not exceed four hundred (400) grams. The user lowers a shell into the launching tube, at the time of firing, with the fuse extending out of the top of the tube. After the firing, the tube is then reloaded with another shell for the next firing. All launching tubes shall be capable of firing twice the number of shells in the kit without failure of the tube. Each package of multiple-shot aerial shells must comply with all warning label requirements of the Consumer Product Safety Commission.

(3) Audible ground devices.

(a) Firecrackers, salutes. Small paper-wrapped or cardboard tube containing not more than fifty (50) mg. of pyrotechnic composition. Those used in aerial devices may contain not more than one hundred thirty (130) milligrams of explosive composition per report. Upon ignition, noise and a flash of light is produced; and

(b) Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, is often produced. The explosive composition used to create the noise may not exceed fifty (50) mg.; and

~~(4) Combination items. Firework devices containing combinations of two (2) or more of the effects described in paragraphs (a), (b), and (c) of subsection (2) of this section].~~

Section 4. KRS 227.704 is amended to read as follows:

Items listed in this section are classified as novelties and trick noisemakers and are not classified as ~~consumer[common]~~ fireworks by the United States Department of Transportation, and their transportation, storage, retail sale, possession, sale, and use shall be allowed throughout the state at all times.

(1) Snake, glow worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.

(2) Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(3) Wire sparkler. Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed one hundred (100) grams of pyrotechnic composition per item. Devices containing any chlorate or perchlorate salts may not exceed five (5) grams of pyrotechnic composition per item.

(4) Trick noisemaker. Item that produces a small report intended to surprise the user. These devices include:

- (a) Party popper. Small plastic or paper item containing not more than sixteen (16) mg. of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.
- (b) Booby trap. Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.
- (c) Snapper. Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.
- (d) Trick match. Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match a small report or a shower of sparks is produced.
- (e) Cigarette load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.
- (f) Auto burglar alarm. Tube which contains pyrotechnic composition that produces a loud whistle or smoke, or both, when ignited. A small quantity of explosive, not exceeding fifty (50) mg. may also be used to produce a small report. A squib is used to ignite the device.

Section 5. KRS 227.706 is amended to read as follows:

As used in KRS 227.700 to 227.750, "display"~~The term "special"~~ fireworks **means pyrotechnic devices or**~~shall mean~~ large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes, but is not limited to, firecrackers containing more than two (2) grains (130 mg) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as "~~consumer~~~~common~~" fireworks." **Display**~~Special~~ fireworks are **defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts. 1500 and 1507, and are** classified as Class B explosives by the United States Department of Transportation.

Section 6. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any **display** fireworks, except as follows:

(1) **(a)** In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(b) Every display shall be handled by a competent **display** operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, ~~to~~~~shall~~ not be hazardous to property or endanger any person.~~[-]~~

(c) "Competent display operator" shall be defined as the person with overall responsibility for the operation and safety of a fireworks display. The competent display operator shall have a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) License and have participated as an assistant in firing at least five (5) public displays. A "competent display operator" is also an employee possessor. A permit under paragraph (a) of this subsection shall be issued only to a competent display operator holding an ATF license.

(d) At least one (1) competent display operator shall be on site during display set-up and firing. This competent display operator shall maintain a copy of the permit application, as signed by the local authority having jurisdiction as identified in this section, on site and at

all times the display is in place, and shall be presented on demand of the state fire marshal or local fire chief. All public displays that require issuance of a permit shall be conducted in accordance with the provisions of National Fire Protection Association (NFPA) 1123 – Code for Fireworks Display (adopted edition).

(e) Permits shall be filed with the state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.

(f) Any person remaining within the display area shall be identified as licensed by the ATF, or an employee thereof, or be an assistant in training to become a competent display operator. All persons remaining within the display area shall be at least eighteen (18) years of age.

(g) The Commissioner of the Department of Housing, Buildings and Construction with recommendation from the state fire marshal shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer the provisions of this subsection. The regulations shall address the process by which permits are issued and any other procedures that are reasonably necessary to effectuate this subsection.

(2) The sale, at wholesale, of any **display** fireworks for ~~permitted~~[supervised] displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, **and Explosives** if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.

(3) The sale ~~of display fireworks in accordance with a license issued by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives~~], at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation].

(4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.

(5) The use of fuses and railway torpedoes by railroads.

(6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.

(7) The use of any pyrotechnic device by military organizations.

(8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.

(9) Nothing in this section shall prohibit a person, firm, co-partnership, non-profit, or corporation from offering for sale, exposing for sale, selling at retail, keeping with intent to sell, possessing or using consumer fireworks as defined in KRS 227.702 and~~The sale of common fireworks]~~ as permitted pursuant to KRS 227.715.

Section 7. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the **consumer**~~common~~ fireworks described in KRS 227.702~~[(4)]~~ may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

(1) Any person **firm, co-partnership, non-profit,** or business intending to sell **consumer**~~[common]~~ fireworks **described in KRS 227.702(1)** shall register annually with the state fire marshal, who may assess a fee of no more than **twenty-five dollars (\$25)**~~[fifty dollars (\$50)]~~ for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business. **Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;**

(2) **Permanent business establishments open year round and in which the sale of consumer fireworks is ancillary to the primary course of business shall only be permitted to sell those consumer fireworks described in KRS 227.702(1), or shall meet the criteria for "seasonal retailer" described in subsection (3) of this section;**

(3) **"Seasonal retailers" shall be defined as any person, firm, co-partnership, non-profit, or corporation intending to sell "consumer fireworks" between June 10th and July 7th, or December 26th and January 4th of each year or both, and shall include permanent businesses, temporary businesses, stores, stands, or tents. A seasonal retailer shall register with the state fire marshal, who may assess a fee of no more than two hundred fifty dollars (\$250) for each site at which fireworks shall be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;**

(4) **Any person, firm, co-partnership, non-profit, or corporation intending to sell consumer fireworks, as defined in KRS 227.702(2) and (3) as the primary source of business, that is not a seasonal retailer as defined in subsection (3) of this section, shall register with the state fire marshal, who may assess a fee of no more than five hundred dollars (\$500) for each site at which fireworks will be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;**

(5) The annual registration required by~~[subsection (4) of]~~ this section shall be received by the state fire marshal at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended. **Evidence that a sales and use tax permit has been obtained from the Department of Revenue shall be presented to the state fire marshal as a condition of registration. If the registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is intended, an additional assessment of one hundred dollars (\$100) shall be added to the initial fee;**

~~(6)~~~~(3)~~ Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;

~~(7)~~~~(4)~~ Each site at which fireworks are offered for sale shall **comply with all applicable provisions of the International Building Code, with Kentucky Amendments (adopted edition), and NFPA 1124 (National Fire Protection Association) – Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (adopted edition)**~~[have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10];~~

~~(8)~~~~(5)~~ No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"

~~(6)~~ No person or business shall give, offer for sale, or sell any **consumer**~~[common]~~ fireworks listed in KRS 227.702 to any person under **eighteen (18)**~~[sixteen (16)]~~ years of age;

~~(9)~~~~(7)~~ **No person under eighteen (18) years of age may be employed by a fireworks distribution facility, or manufacturing facility. No person under eighteen (18) years of age**

shall sell consumer fireworks at a consumer fireworks retail sales facility registered under Section 7 of this Act unless the individual is supervised by a parent or guardian;

(10) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the state fire marshal may take that action, as provided in KRS 227.330(6); and

(11) A person lawfully possessing consumer fireworks, as defined in KRS 227.702(2) and (3) may use those items if:

(a) He or she is at least eighteen (18) years of age;

(b) Fireworks are not ignited within two hundred (200) feet of any structure, vehicle, or any other person; and

(c) Use of the fireworks does not place him or her in violation of any lawfully enacted local ordinance.

Section 8. KRS 227.750 is amended to read as follows:

(1) The state fire marshal, or any fire department having jurisdiction which has been deputized to act on behalf of the state fire marshal, shall cause to be removed at the expense of the owner all stocks of fireworks which are stored and held in violation of this chapter. After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified fireworks wholesaler.

(2) After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified manufacturer, distributor, or wholesaler. All seized fireworks or explosives with a Class 1.3G or "Display" designation shall require the notification of the United States Bureau of Alcohol, Tobacco and Firearms. The state fire marshal shall provide the owner or possessor a receipt containing the complete inventory of any fireworks seized within five (5) business days of the seizure.

(3) Before any seized fireworks may be disposed of:

(a) If the owner of the seized fireworks is known to the state fire marshal, the state fire marshal shall give notice by registered mail or personal service to the owner of the state fire marshal's intention to dispose of the fireworks. The notice shall inform the owner of the state fire marshal's intent. The state fire marshal shall conduct an administrative hearing in accordance with KRS Chapter 13B concerning the disposal of fireworks; or

(b) If the identity of the owner of any seized fireworks is not known to the state fire marshal, the state fire marshal shall cause to be published, in a newspaper of general circulation in the county in which the seizure was made, notice of the seizure, and of the state fire marshal's intention to dispose of the fireworks. The notice shall be published once each week for three (3) consecutive weeks. If no person claims ownership of the fireworks within ten (10) days of the date of the last publication, the state fire marshal may proceed with disposal of the fireworks. If the owner does claim the fireworks within ten (10) days of the date of the last publication, a hearing as set out in paragraph (a) of this subsection shall be held

(4) Nothing in KRS 227.700 to 227.750 shall restrict a local government from enacting ordinances that affect the sale or use of fireworks within their jurisdiction.~~The state fire marshal shall seize, take, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter. All fireworks held, possessed, or used in violation of this chapter shall be destroyed as~~

contraband].

Section 9. KRS 227.708 is amended to read as follows:

- (1) Items described in KRS 227.702~~[(4)]~~ are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.
- (2) Items described in ~~[KRS 227.702(2) and (3) and]~~KRS 227.706 are not legal for retail sale but are legal under permits granted pursuant to KRS 227.710 for the purposes specified in this chapter for public displays and may be sold at wholesale as provided in this chapter.
- (3) Items described in KRS 227.704 are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.

Section 10. KRS 227.782 is amended to read as follows:

- (1) There is hereby established in the State Treasury a special fund to be known as the fire prevention and public safety fund. The fund shall consist of all moneys recovered as penalties under KRS 227.778 **and moneys collected for fees pursuant to KRS 227.715.**]
- (2) **Notwithstanding KRS 45.229, fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.**
- (3) **Any interest earnings of the fund shall become a part of the fund and shall not lapse.**
- (4) The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be made available to the state fire marshal to **administer Sections 1 to 10 of this Act and to** support fire safety and prevention programs.

Section 11. Whereas the ordinary effective date of legislation passed during the 2011 Regular Session of the Kentucky General Assembly would hinder persons subject to the provisions of this Act from complying with its requirements before the July 4 holiday, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

HOUSE BILL 362 GINSENG.

Section 1. KRS 246.650 is amended to read as follows:

As used in KRS 246.660, unless the context clearly requires otherwise:

- (1) "Harvest" means to take any part of the~~[wild]~~ ginseng plant while the plant is living; ~~and~~~~[-]~~
- (2) "~~[Wild]~~ Ginseng" means any **part of the American ginseng plant known as Panax quinquefolius**~~ginseng plant growing as nature caused the plant to grow without any assistance from man, but includes any plant grown from seeds of a wild plant replanted within fifty (50) feet of the harvesting point using no implement other than fingers for planting.~~
- (3) ~~"Cultivated ginseng" means any ginseng plant grown under natural or artificial shade and cultivated according to varying standards of cultivation procedures].~~

Section 2. KRS 246.660 is amended to read as follows:

- (1) (a) The department shall administer a program for~~[wild American]~~ ginseng in Kentucky which provides a framework, including a limited harvesting season, in which~~[wild American]~~ ginseng shall be eligible for exportation in compliance with federal requirements.
- (b) **Information relating to the purchase or sale of ginseng that is furnished to or**

acquired by the department shall constitute proprietary information and not be subject to public disclosure, except to the extent the department deems necessary in any administrative or judicial proceeding involving the administration or enforcement of its administrative regulations.

(2) (a) The department shall promulgate **administrative** regulations to carry out this program and ~~may~~~~cooperate with and~~ enter into agreements with any other agency of this state, any other state, or the federal government to carry out this program.~~[Any regulation promulgated under this section shall be no more restrictive than minimum federal requirements.]~~

(b) The department shall establish licensing requirements for dealers of ginseng.

(c) The department shall promulgate administrative regulations relating to the ginseng program that establish:

1. A comprehensive set of administrative violations and civil penalties each not to exceed one thousand dollars (\$1,000); and

2. The procedure for the suspension or revocation of any license or certificate issued by the department.

SECTION 3. A NEW SECTION OF KRS 246.650 TO 246.660 IS CREATED TO READ AS FOLLOWS:

KRS 246.655 Kentucky ginseng fund.

(1) There is hereby established in the State Treasury a separate trust and agency account to be known as the Kentucky ginseng fund to be administered by the Department of Agriculture.

(2) Moneys in this fund shall be used to help administer the ginseng program as provided by KRS 246.660.

(3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year, including interest, shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

(4) The fund may receive gifts, grants, federal funds, and any other funds both public and private.

Section 4. KRS 246.990 is amended to read as follows:

(1) Any person who violates subsection (2) of KRS 246.210, subsection (2) of KRS 246.220, or subsection (1) of KRS 246.420 shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for the first offense; he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and be confined in the county jail for not less than sixty (60) days nor more than one hundred and twenty (120) days, for each subsequent offense.

(2) Any person who violates subsection (3) of KRS 246.220 shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) or be imprisoned for not more than ten (10) days, or both. Each day's hindering or refusal of access shall constitute a separate offense.

(3) Any person who violates subsection (4) of KRS 246.220 shall be fined not less than two dollars (\$2) nor more than fifty dollars (\$50).

(4) Any person who violates subsection (5) of KRS 246.220 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).

(5) Any person who violates subsection (6) of KRS 246.220 shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50).

(6) Any person who violates subsection (7) of KRS 246.220 shall be fined not less than one

hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than three (3) months, or both.

(7) Any owner or operator of a dairy plant who shall fail to comply with the provisions of KRS 246.240 or any part thereof shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars (\$100).

(8) (a) Any person who purchases ginseng knowing that the ginseng was taken, acquired, possessed, sold, transported, or purchased in violation of administrative regulations authorized under KRS 246.660 shall be guilty of a Class A misdemeanor.

(b) The Commissioner or any peace officer may seize and take possession of any ginseng taken, acquired, possessed, sold, transported, or purchased by a person committing a violation of administrative regulations authorized under KRS 246.660. Any ginseng seized in accordance with this paragraph shall be impounded by the arresting officer and shall be taken before the court trying the person arrested.

(c) Upon conviction, the court trying the case shall have the discretion of determining whether any of the ginseng seized under paragraph (b) of this subsection shall be declared contraband. Any ginseng seized under paragraph (b) of this subsection is subject to being declared contraband. If any ginseng is declared contraband, the court shall enter an order accordingly. A copy of the order shall be forwarded to the Commissioner and the ginseng shall be placed in the custody of the arresting officer, to be delivered to the Commissioner.

(d) The Commissioner may sell, at the highest market price obtainable, with the approval of the Governor and Finance and Administration Cabinet, all contraband ginseng which comes into his or her possession under the order of any court. All proceeds arising from the sale of contraband ginseng shall be paid into the Kentucky ginseng fund established in KRS 246.650. A record of the sale, including the name of the purchaser and the price paid, shall be kept by the Commissioner.
~~Any person who violates any administrative regulation promulgated by the department under the provisions of KRS 246.660 shall have a civil fine imposed of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).~~

(9) Any person who violates subsection (2) of KRS 246.420 shall be disqualified from exhibiting at an exhibition for a first offense, and shall be disqualified for up to five (5) years for a second or subsequent offense.

HOUSE BILL 382 - CONSUMER PROTECTION.

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

KRS 367.409 Business solicitation following motor vehicle accident prohibited -- Exceptions -- Penalty -- Additional sanctions by state regulating authority.

(1) For the first thirty (30) days following a motor vehicle accident, a person, as that term is defined in KRS 446.010, shall not directly solicit or knowingly permit another person to directly solicit an individual, or a relative of an individual, involved in a motor vehicle accident for the provision of any service related to a motor vehicle accident.

(2) For the purposes of this section, "solicit":

(a) Means to initiate communication in anticipation of financial gain or remuneration for value; and

(b) Does not include:

1. Advertising directed to the general public;
 2. Communications by fire, police, or emergency medical personnel dispatched to a motor vehicle accident; and
 3. Communications by an insurer as defined by KRS 304.1-040, an agent as defined by KRS 304.9-020, or an adjuster licensed pursuant to Subtitle 9 of KRS Chapter 304, as those terms are defined in KRS Chapter 304, or an employee of an insurer or agent.
- (3) A person who knowingly violates this section shall be subject to a one thousand dollar (\$1,000) fine.
- (4) In addition to the penalty provided in subsection (3) of this section:
- (a) A person licensed or certified by a regulating authority in Kentucky who violates this section may be sanctioned by the licensing or regulating authority;
- (b) Any charges owed by or on behalf of an individual involved in a motor vehicle accident for services rendered by or on or behalf of a person who violates this section shall be void; and
- (c) Any moneys paid by or on behalf of a victim of a motor vehicle accident for services rendered by or on behalf of a person who violates this section shall be forfeited and returned to the payor.

Section 2. KRS 21A.310 is amended to read as follows:'

- (1) Notwithstanding KRS 21A.160, any person violating any provision of KRS 21A.300 shall, upon conviction, be guilty of a Class A misdemeanor.
- (2) The Kentucky Supreme Court may discipline any attorney who violates any provision of KRS 21A.300.
- (3) A penalty may be imposed on an attorney pursuant to subsection (1) of this section, subsection (2) of this section, or both subsections.
- (4) In addition to any penalties imposed pursuant to subsections (1) and (2) of this section, the penalties provided under subsection (4)(b) and (c) of KRS 367.409 shall be imposed.

SECTION 3. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

KRS 199.895 Evacuation plan for child-care center required -- Annual updating of plan -- Provision of plan to local emergency management officials and parents.

- (1) A child-care center licensed under KRS 199.896 shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the center. The plan shall include but not be limited to:
 - (a) A designated relocation site and evacuation route;
 - (b) Procedures for notifying parents of the relocation and ensuring family reunification;
 - (c) Procedures to address the needs of individual children including children with special needs;
 - (d) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;
 - (e) Coordination with local emergency management officials; and
 - (f) A program to ensure that appropriate staff are familiar with the plan's components.
- (2) A child-care center shall update the evacuation plan by December 31 each year.
- (3) A child-care center shall retain an updated copy of the plan for evacuation, provide

an updated copy to appropriate local emergency management officials, and provide a copy to each parent, custodian, or guardian of the child at the time of the child's enrollment in the program and whenever the plan is updated.

Section 4. Section 3 of this Act takes effect December 31, 2011.

HOUSE BILL 463 – CONTROLLED SUBSTANCES AND ARREST AUTHORITY

Section 3. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

(6) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(a) Targets and prioritizes the specific criminal risk factors of the individual based upon his or her assessment results;

(b) Matches the type and intensity of supervision and treatment conditions to the individual's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;

(c) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and

(d) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;

* * * * *

~~(10)~~~~(9)~~ "Criminal risk factors" are characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include but are not limited to the following risk and criminogenic need factors: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse;

* * * * *

~~(15)~~~~(13)~~ "Evidence-based practices" means policies, procedures, programs and practices proven by scientific research to reliably produce reductions in recidivism when implemented competently;

~~(19)~~~~(16)~~ "Graduated sanction" means any of a wide range of accountability measures and programs for supervised individuals, including but not limited to electronic monitoring; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; disallowance of future earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration;

* * * * *

(33) "Pretrial risk assessment" means an objective, research based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication;

* * * * *

~~(35)~~~~(30)~~ "Risk and needs assessment" or "validated risk and needs assessment" means an actuarial tool scientifically proven to determine a person's risk to reoffend and

criminal risk factors, that when properly addressed, can reduce that person's likelihood of committing future criminal behavior;

* * * * *

(39) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail;

* * * * *

(41) "Treatment" when used in a criminal justice context, means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior. Treatment options may include, but shall not be limited to, community-based programs that are consistent with evidence-based practices; cognitive-behavioral programs; faith-based programs; inpatient and outpatient substance abuse or mental health programs; and other available prevention and intervention programs that have been scientifically proven to produce reductions in recidivism when implemented competently. "Treatment" does not include medical services;

REMAINING SECTIONS RENUMBERED APPROPRIATELY

SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.005 Legislative finding and declarations.

The General Assembly hereby finds, determines, and declares that:

(1) The regulation of controlled substances in this Commonwealth is important and necessary for the preservation of public safety and public health; and

(2) Successful, community-based treatment can be used as an effective tool in the effort to reduce criminal risk factors. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and validated research-based assessment tools and professional evaluations offer a potential alternative to incarceration in appropriate circumstances and shall be used accordingly.

Section 5. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his or her authorized agent under his or her immediate supervision and pursuant to his or her order; or

(b) The patient or research subject at the direction and in the presence of the practitioner;

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;

(3) "Cabinet" means the Cabinet for Health and Family Services;

(4) "Child" means any person under the age of majority as specified in KRS 2.015;

(5) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;

(7) [(6)] (a) "Controlled substance analogue," except as provided in paragraph [subparagraph]

(b) of this subsection, means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;
2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;

~~(12)~~~~(14)~~ **"Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;**

* * * * *

~~(16)~~ **"Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;**

* * * * *

~~(20)~~~~(17)~~ "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

- (a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice;
- (b) By a practitioner, or by his or her authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
- (c) By a pharmacist as an incident to his or her dispensing of a controlled substance in the course of his or her professional practice;

* * * * *

~~(34)~~~~(31)~~ "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his or her designee has conducted at least one (1) good faith prior examination;

* * * * *

~~(37)~~~~(34)~~ **"Presumptive probation" means a sentence of probation not to exceed the maximum term specified for the offense, subject to conditions otherwise authorized by law, that is presumed to be the appropriate sentence for certain offenses designated in this chapter, notwithstanding contrary provisions of KRS Chapter 533. That presumption shall only be overcome by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the**

community, is not amenable to community-based treatment, or poses a significant risk to public safety;

* * * * *

(39) "Recovery program" means an evidence-based, nonclinical service that assists individuals and families working toward sustained recovery from substance use and other criminal risk factors. This can be done through an array of support programs and services that are delivered through residential and nonresidential means;

* * * * *

(49) [(44)] "Ultimate user" means a person who lawfully possesses a controlled substance for his **or her** own use or for the use of a member of his **or her** household or for administering to an animal owned by him **or her** or by a member of his **or her** household.

Section 6. KRS 218A.140 is amended to read as follows:

- (1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.
- (b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.
- (c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.
- (d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.
- (e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself **or herself** to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.
- (f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter.
- (g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.
- (2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.
- (3) No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.
- (4) No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.
- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony ~~[for a first offense and a Class C felony for subsequent offenses].~~

Section 7. KRS 218A.1404 is amended to read as follows:

- (1) No person shall traffic in any controlled substance except as authorized by law.
- (2) No person shall possess any controlled substance except as authorized by law.
- (3) No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.
- (4) Unless another specific penalty is provided in this chapter, any person who violates the provisions of subsection (1) or (3) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for subsequent offenses and any person who violates the provisions of subsection (2) of this section shall be guilty of a Class A misdemeanor ~~[for the first offense and a Class D felony for subsequent offenses]~~.

Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~ **yards** of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines or salvia.

Section 9. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in:
 - (a) Four (4) grams or more of cocaine;
 - (b) Two (2) grams or more of heroin or methamphetamine;
 - (c) Ten (10) or more dosage units of a controlled substance~~;~~ that is classified in Schedules I or II ~~and~~which is a narcotic drug, ~~or~~; a controlled substance analogue;
 - (d) Any quantity of lysergic acid diethylamide; phencyclidine;~~;~~ a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~;~~ gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; or
 - (e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.
- (2) The amounts specified in subsection (1) of this section may occur in a single transaction or may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.
- (3)
 - (a) Except as provided in paragraph (b) of this subsection, any person who violates the provisions of ~~subsection (1) of~~ this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.
 - (b) Any person who violates the provisions of subsection (1)(e) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second offense or subsequent offense;
- ~~(a) For the first offense be guilty of a Class C felony.~~
 - ~~(b) For a second or subsequent offense be guilty of a Class B felony.~~

Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
- (a) **He or she knowingly and unlawfully traffics in:**
1. **Ten (10) or more dosage units of** a controlled substance classified in Schedules I and II ~~that~~^{which} is not a narcotic drug; or specified in KRS 218A.1412; or
 2. **Twenty (20) or more dosage units of** a controlled substance classified in Schedule III; but not ~~lysergic acid diethylamide, phenacyclidine,~~ synthetic cannabinoid agonists or piperazines, salvia, or marijuana; ~~or~~
- (b) He **or she** knowingly and unlawfully prescribes~~, orders,~~ distributes, supplies, or sells an anabolic steroid for:
1. Enhancing **human** performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; **or**
- (c) **Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.**
- (2) (a) **Except as provided in paragraph (b) of this subsection,** any person who violates the provisions of subsection (1) of this section shall **be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.**
- (b) **Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:**
1. **A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and**
 2. **A Class D felony for a second offense or subsequent offense**~~;~~
- (a) ~~For the first offense be guilty of a Class D felony.~~
- (b) ~~For a second or subsequent offense be guilty of a Class C felony.~~

Section 11. KRS 218A.1414 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the third degree when he **or she** knowingly and unlawfully traffics in:
- (a) **Twenty (20) or more dosage units of** a controlled substance classified in Schedules IV or V; **or**
- (b) **Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.**
- (2) (a) Any person who violates the provisions of subsection (1)(a) of this section shall **be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.**
- (b) **Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:**
1. **A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation; and**
 2. **A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years**~~;~~
- (a) ~~For the first offense be guilty of a Class A misdemeanor.~~
- (b) ~~For a second or subsequent offense be guilty of a Class D felony.~~

Section 12. KRS 218A.1415 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

(a) A controlled substance ~~[that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,]~~ that is classified in Schedules I or II and~~[which]~~ is a narcotic drug;

(b) A controlled substance analogue;

(c) **Methamphetamine;**

(d) Lysergic acid diethylamide;

(e) Phencyclidine;

(f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or

(g) Flunitrazepam, including its salts, isomers, and salts of isomers.

(2) Possession of a controlled substance in the first degree is~~[-~~:

~~(a) For a first offense]~~ a Class D felony **subject to the following provisions:**

(a) The maximum term of incarceration shall be no greater than three (3) years, notwithstanding KRS Chapter 532;

(b) For a person's first or second offense under this section, he or she may be subject to a period of:

1. Deferred prosecution pursuant to KRS 218A.14151; or

2. Presumptive probation;

(c) Deferred prosecution under paragraph (b) of this subsection shall be the preferred alternative for a first offense; and

(d) If a person does not enter a deferred prosecution program for his or her first or second offense, he or she shall be subject to a period of presumptive probation, unless a court determines the defendant is not eligible for presumptive probation as defined in KRS 218A.010.

~~[(b) For a second or subsequent offense a Class C felony.]~~

Section 13. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not~~[-~~ lysergic acid diethylamide, phencyclidine,] synthetic cannabinoid agonists or piperazines, salvia, or marijuana.

(2) Possession of a controlled substance in the second degree is~~[-~~:

~~(a) For a first offense]~~ a Class A misdemeanor.

~~[(b) For a second or subsequent offense a Class D felony.]~~

Section 14. KRS 218A.1417 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the third degree when he or she knowingly and unlawfully possesses a controlled substance classified in Schedules IV or V.

(2) Possession of a controlled substance in the third degree is~~[-~~:

~~(a) For a first offense]~~ a Class A misdemeanor.

~~[(b) For a second or subsequent offense a Class D felony.]~~

Section 15. KRS 218A.1418 is amended to read as follows:

KRS 218A.1418 Theft of a controlled substance -- **Not considered theft under KRS Chapter 514 (catchline amended)**

(1) A person is guilty of theft of a controlled substance when he **or she** unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.

(2) Theft of a controlled substance is[~~:~~

(a) ~~for a first offense] a Class D felony[if the controlled substance has a value of three hundred dollars (\$300) or less.~~

(b) ~~For a second or subsequent offense, or value greater than three hundred dollars (\$300), a Class C felony].~~

(3) The acts specified in this section shall not constitute theft under KRS Chapter 514.

Section 16. KRS 218A.1422 is amended to read as follows:

(1) A person is guilty of possession of marijuana when he **or she** knowingly and unlawfully possesses marijuana.

(2) Possession of marijuana is a Class **B[A]** misdemeanor, **except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than forty-five (45) days.**

Section 17. KRS 218A.1427 is amended to read as follows:

(1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he **or she** knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.

(2) Possession of synthetic cannabinoid agonists or piperazines is a Class **B[A]** misdemeanor, **except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.**

Section 18. KRS 218A.1451 is amended to read as follows:

(1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.

(2) Possession of salvia is a Class B misdemeanor, **except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.**

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SECTION 45. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

KRS 431.067 Participation in global position monitoring systems program as condition of pretrial release.

When considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate or high risk defendant, the court considering the release may order as a condition of pretrial release that the person participate in a global positioning monitoring system program under the same terms and conditions provided in KRS 431.517 during all or part of the person's period of pretrial release.

Section 46. KRS 431.015 is amended to read as follows:

(1) (a) **KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection,** a peace officer **shall[may]** issue a citation instead of

making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.

(b) A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:

1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;

2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or

3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.

(c) A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.

(2) A peace officer may issue a citation instead of making an arrest for a violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).

(3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.

(4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

Section 47. KRS 431.525 is amended to read as follows:

(1) The amount of the bail shall be:

(a) Sufficient to insure compliance with the conditions of release set by the court;

(b) Not oppressive;

(c) Commensurate with the nature of the offense charged;

(d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and

(e) Considerate of the financial ability of the defendant.

(2) When a person is charged with an offense punishable by fine only, the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs.

(3) When a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed~~[double]~~ the amount of the fine.

(4) When a person has been charged with one (1) or more misdemeanors, the amount of the bail for all charges shall be encompassed by a single amount of bail that shall not exceed the amount of the fine and court costs for the one (1) highest misdemeanor charged. This subsection shall apply only to misdemeanor offenses not involving physical injury or sexual contact.

(5) When a person has been convicted of a misdemeanor offense and a sentence of jail, probation, conditional discharge, or sentence other than a fine only has been imposed, the amount of bail for release on appeal shall not exceed double the amount of the maximum

fine that could have been imposed for the one (1) highest misdemeanor offense for which the person was convicted. This subsection shall apply only to misdemeanors not involving physical injury or sexual contact.

(6) The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk or to be a danger to others.

(7) If a court determines that a defendant shall not be released pursuant to subsection (6) of this section, the court shall document the reasons for denying the release in a written order.

(8) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

SECTION 48. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

KRS 431.066 Pretrial release and bail options --Assessment of flight risk, likelihood of appearing at trial, and risk of danger -- Credit toward bail for time in jail.

(1) When a court considers pretrial release and bail for an arrested defendant, the court shall consider whether the defendant constitutes a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.

(2) If the defendant poses low risk of flight, is likely to appear for trial and is not likely to be a danger to others, the court shall order the defendant released on unsecured bond or on the defendant's own recognizance subject to such other conditions as the court may order.

(3) If the defendant poses a moderate risk of flight, has a moderate risk of not appearing for trial, or poses a moderate risk of danger to others, the court shall release the defendant under the same conditions as in subsection (2) of this section but shall consider ordering the defendant to participate in global positioning system monitoring, controlled substance testing, increased supervision, or such other conditions as the court may order.

(4) (a) Except as provided in paragraph (b) of this subsection, regardless of the amount of the bail set, the court shall permit the defendant a credit of one hundred dollars (\$100) per day as a payment toward the amount of the bail set for each day or portion of a day that the defendant remains in jail prior to trial. Upon the service of sufficient days in jail to have sufficient credit to satisfy the bail, the court shall order the defendant released from jail on the conditions specified in this section or in this chapter.

(b) The provisions of paragraph (a) of this subsection shall not apply to:

1. Any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020,

530.064(1)(a), 531.310, or 531.320, or who is a violent offender as defined in KRS 439.3401;
or

2. A defendant who is found by the court to present a flight risk or to be a danger to others.

(5) If a court determines that a defendant shall not be released pursuant to subsection (4) of this section, the court shall document the reasons for denying the release in a written order.

(6) The jailer shall be responsible for tracking the credit earned by a defendant pursuant to subsection (4) of this section.

EDITOR'S NOTE: The remaining sections of this bill are relevant only to the Department of Corrections and the court system. Portions of this bill are designated **EMERGENCY** or **DELAYED ENACTMENT**, but all of the sections above shall take effect at the normal time.

Section 17. This Act may be cited as the Public Safety and Offender Accountability Act.

Section 18. Section 34 of this Act takes effect January 1, 2012.

Section 19. Sections 37 and 49 of this Act take effect July 1, 2013.

Section 20. Section 64 of this Act takes effect November 1, 2013.

Section 21. Section 67 of this Act takes effect July 1, 2013.

Section 22. Whereas the Kentucky Supreme Court declared the statutory procedure for revoking sex offenders on conditional discharge to be unconstitutional, and the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of this Act impedes that protection, an emergency is declared to exist, and Sections 87 to 91 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.